United States Court of Appeals

for the Second Circuit

APPENDIX

76-1435

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-1435

UNITED STATES OF AMERICA,

Appellee,

v.

JOHN M. KING and
A. ROWLAND BOUCHER,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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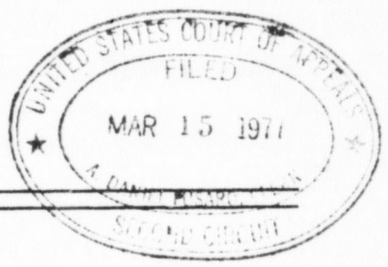

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,	T-6490
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v.	
JOHN M. KING and A. ROWLAND BOUCHER,	Case No. 75 Cr. 70
Appellants.	Judge Marvin E. Frankel

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, : C/A Ref. No. 76-1440

Appellee, : UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Case No. 75 Cr. 70

-against : Hon. Marvin E. Frankel

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants-Appellants. :

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SECOND SUPPLEMENTAL RECORD

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JEW:ma

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

JOHN M. KING and
A. ROWLAND BOUCHER,

Defendants.

INDICTMENT

75 Cr. 70

The Grand Jury charges:

INTRODUCTION

1. The defendant JOHN M. KING, at all times relevant to this indictment until August, 1970, was the Chairman of the Board of Directors and the Chief Executive Officer of King Resources Company ("KRC").

2. The defendant A. ROWLAND BOUCHER, at all times relevant to this indictment until August, 1970, was the President of King Resources Company ("KRC") and in August, 1970 he became Chairman of the Board of Directors and Chief Executive Officer of KRC.

3. King Resources Company ("KRC"), at all times relevant to this indictment was a Maine corporation with principal offices in Denver, Colorado, and was engaged primarily in the business of buying, selling, managing and operating oil, gas and other natural resource properties and interests in such properties.

4. The Fund of Funds, Limited ("FOF") at all times relevant to this indictment was an open ended Canadian mutual fund with principal offices in Geneva, Switzerland, whose Class A non voting preference shares were owned by more than 150,000 investors.

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JRW:ma

5. In 1968, KRC entered into an arrangement with FOF whereby KRC selected and sold to FOF undivided interests in oil, gas and other natural resource properties and interests in such properties. These sales amounted to more than $63,000,000 as of December 31, 1969. In 1969, FOF became KRC's major client accounting for approximately 35% of gross revenues.

6. All of the foregoing purchases were made for the benefit of FOF through the Natural Resources Fund Account ("NRFA") of The Fund of Funds Propriety Funds, Ltd., ("FOF Prop") and two subsidiaries of FOF Prop, Natural Resources Corporation ("NRC") and Arctic Investments Ltd. ("AIL").

7. The Fund of Funds Proprietary Funds, Ltd. ("FOF Prop"), at all times relevant to this indictment was a Canadian Corporation wholly owned by FOF which in turn owned all the issued and outstanding stock of Natural Resources Corporation ("NRC") and Arctic Investments, Ltd. ("AIL").

8. The Natural Resources Corporation ("NRC") at all times relevant to this indictment was a Maryland corporation which owned various interests in natural resource properties.

9. Arctic Investments, Ltd., ("AIL") at all times relevant to this indictment was a Bahamian corporation which owned various interests in natural resource properties.

A 14

JRW:ma

10. The Natural Resources Fund Account ("NRFA") at all times relevant to this indictment was an account of FOF Prop which held natural resource investments.

11. IOS Ltd. ("IOS") at all times relevant to this indictment was a Canadian corporation engaged in various financial, real estate, banking and securities businesses. IOS controlled the common voting stock of FOF and owned all of the issued and outstanding stock of Regency Products Ltd. ("Regency").

12. Regency was a Bahamian corporation which in 1969 had entered into an investment advisory agreement with FOF Prop which provided that Regency was entitled to 10% of all realized and unrealized gains of the NRFA.

13. In December 1969, approximately 4% of the assets of FOF were transferred to IOS Growth Fund, Ltd. ("Growth") which was an open end Canadian mutual fund.

14. Edward M. Cowett, who is now deceased, at all times relevant to this indictment until May 1970 was a director of IOS, FOF, FOF Prop, AIL, NRC and Growth.

15. During 1968 and 1969, KRC sold to NRC and AIL a 50% undivided interest in Canadian arctic oil and gas permits, while retaining the other 50% undivided interest for itself. These permits covered approximately 22.3 million net acres and FOF's 50% interest was purchased from KRC at a total cost of approximately $11,000,000 (ranging from 75 cents to $2 an acre). In July 1969, an independent geologist and consultant delivered an evaluation to KRC appraising this Canadian arctic oil and gas permit acreage to have an average value of $1.88 per acre.

JRN:mz

16. In 1969, Edward M. Cowett requested KRC to sell a portion of FOF's interest in the Canadian arctic oil and gas permits in order to permit FOF to revalue the entire FOF investment in the Canadian arctic oil and gas permits.

FRAUD SCHEME

17. From on or about January 1, 1963, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JOHN M. KING and A. ROWLAND BOUCHER, the defendants, and others unknown to the Grand Jury, did devise and employ a device, scheme and artifice to defraud in connection with the purchase and sale of securities, to wit, undivided interests in oil, gas and other natural resource properties and interests in such properties.

18. It was a part of said scheme to defraud that the defendants JOHN M. KING and A. ROWLAND BOUCHER would cause FOF to purchase undivided interests in oil, gas and other natural resource properties and interests in such properties from KRC at substantially higher prices than those paid by KRC to acquire these interests thereby generating substantial revenues for KRC and other corporate entities affiliated with or controlled by JOHN M. KING.

19. It was further a part of said scheme to defraud that the defendants JOHN M. KING and A. ROWLAND BOUCHER in an effort to induce additional purchases from KRC would falsely and fraudulently represent to FOF's shareholders, officers, directors and other representatives including FOF's auditors, Arthur Andersen & Co., that various oil, gas and other natural resources interests purchased on FOF's behalf from KRC had a far greater value than was actually the fact.

20. It was further a part of said scheme to defraud that to enable FOF to increase the stated value of its interest in the Canadian arctic oil and gas permits, the defendants JOHN M. KING and A. ROWLAND BOUCHER fraudulently arranged for certain purchasers, including John Mecom and Consolidated Oil and Gas, Inc. ("COG") to contract to acquire an undivided interest in said permits thereby creating the false impressions (a) that these transactions were bona fide, arms length sales and (b) that the KRC-FOF arctic permits were worth $15 per acre. The interest acquired by Mecom and COG amounted to 4.[illegible]% of the total interest held jointly by KRC and FOF, and [illegible]75% of FOF's 50% interest. The defendants, JOHN M. KING and A. ROWLAND BOUCHER then fraudulently and falsely represented that these transactions were bona fide arms-length sales which fairly represented the true value of the entire interest held by KRC and FOF in the Canadian arctic oil and gas permits.

21. It was further a part of said scheme to defraud that in order to induce John Mecom to sign the aforementioned arctic contract the defendants JOHN M. KING and A. ROWLAND BOUCHER, would and did arrange to secretly guarantee that JOHN M. KING would provide Mecom with sufficient net cash receipts to enable Mecom to make the contract payments through October 1971 and further guaranteed that In November 1971, JOHN M. KING would assume and pay all of Mecom's obligations under the contract if requested to do so.

22. It was further a part of said scheme to defraud that the defendants JOHN M. KING and A. ROWLAND BOUCHER, would and did cause Royal Resources Corporation, a corporation controlled by JOHN M. KING, to pay Mecom $275,000 in January 1972 which Mecom needed and did in fact use to pay the $260,912 down payment required under the arctic contract.

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23. It was further a part of said scheme to defraud that in order to induce COG to sign the aforementioned arctic contract, the defendants JOHN M. KING and A. ROWLAND BOUCHER would and did guarantee COG that the contract would not be effective unless and until financing was obtained to provide COG with the $443,550 down payment required under the contract and further guaranteed that the defendant A. ROWLAND BOUCHER would find this down payment financing for COG.

24. It was further a part of said scheme to defraud that, in order to induce COG to sign the arctic contract, the defendant JOHN M. KING secretly promised COG that KRC would jointly promote and sell undivided interests in the Canadian arctic oil and gas permits to third parties with the likely consequence that COG would not have to pay much if any of its $5,218,242 in work obligations required under the contract.

25. It was further a part of said scheme to defraud that the defendants JOHN M. KING and A. ROWLAND BOUCHER would and did deliberately and fraudulently conceal all the true facts and circumstances surrounding the arctic sale transactions referred to in paragraph 20 and specifically the facts set forth in paragraphs 21 through 24 from FOF's directors, shareholders, and auditors who were assigned to audit and review the aforementioned transactions.

26. It was further a part of said scheme to defraud that the defendants JOHN M. KING and A. ROWLAND BOUCHER would and did make false, fraudulent and misleading statements to the Arthur Andersen representatives who were auditing FOF, Growth and KRC for 1969 and who were auditing and reviewing the arctic

sales, in an effort (a) to create the false impression that those sales were bona fide and arms length and (b) to prevent any adverse opinion of FOF's arctic revaluation by the auditors.

27. It was further a part of said scheme to defraud that the defendants JOHN M. KING and A. ROWLAND BOUCHER would and did make false, fraudulent and misleading statements to the auditors, including representations that:

a) There were no arrangements verbal or written, through which any officers or companies controlled by them had committed to acquire any of the interest sold, or had guaranteed in any way the economic results of the transactions to the purchasers.

b) The transactions were bona fide sales in all respects and were negotiated on an arms length basis with the respective purchasers.

c) Market value as of December 31, 1969, of the investments of Natural Resources Fund had been determined on a fair and reasonable basis.

d) There were no arrangements, verbal or written, whereby the purchasers of such interests could turn them back to any company officers in settlement of the purchasers obligations under the respective contracts of sale.

e) The purchasers were legally obligated to pay KRC the full amounts specified in the contracts.

28. On the basis of the Maxam and CCG sales, FOF and Growth, without any dissent or disclaimer from their auditors, recorded an increase of approximately $100,000,000 in the value of the remainder of their Canadian arctic oil and gas permit interests as of December 31, 1969, thereby

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falsely inflating their assets substantially. In January 1970, as a result of this revaluation, FOF and Growth paid a 10% fee of approximately $10,000,000 to Regency.

STATUTORY ALLEGATIONS

29. From on or about the 1st day of January, 1968 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, the defendants JOHN M. KING and A. ROLLAND DUCHMER, and other persons unknown to the Grand Jury, unlawfully, wilfully and knowingly, by use of means and instrumentalities of interstate commerce and the mails, did directly and indirectly use and employ in connection with the purchase and sale of securities, to wit, undivided interests in Canadian arctic oil and gas permits, manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 [17 CFR Section 240.10b-5] of the rules and regulations of the United States Securities and Exchange Commission, and did (a) employ devices, schemes and artifices to defraud, (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engage in acts, practices and courses of business which operated and would operate as a fraud and deceit upon FOF and Growth, their shareholders and directors, their auditors, Arthur Andersen & Co., and other persons.

(Title 15, United States Code, Section 78j(b); Title 18, United States Code, Section 2.)

JMW:ma

COUNT TWO

The Grand Jury further charges:

1. From on or about January 1, 1968, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JOHN M. KING and A. RICHARD BOSSOM, the defendants, and other persons unknown to the Grand Jury, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud [illegible] and Carwith, their shareholders, directors and auditors, Arthur Andersen and Co., and other persons, and to obtain money and properties from the aforementioned individuals and entities by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do did place and caused to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the direction certain mail matter to be sent and delivered by the Postal Service.

2. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Count Two of this indictment.

(Title 18, United States Code, Section 1341 and 2.)

JEW:ms

COUNT THREE

The Grand Jury further charges:

1. From on or about January 1, 1968 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JOHN M. KING and A. RONALD BUTCHER, the defendants, and other persons unknown to the Grand Jury, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud NCF and Growth, their shareholders, directors, auditors, Arthur Andersen and Co., and other persons, and to obtain money and properties from the aforementioned individuals and entities by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did transmit and caused to be transmitted by means of wire communications in interstate and foreign commerce, to wit, telexes, telegrams and telephone calls, writings, signs, signals and sounds.

2. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Count Three of this indictment.

(Title 18, United States Code, Sections 1343 and 2.)

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COUNT FOUR

The Grand Jury further charges:

1. From on or about the first day of January 1, 1968, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JOHN M. KING and A. ROWLAND BOUCHER, the defendants, and other persons unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agreed together and with each other to commit certain offenses against the United States, to wit, violations of Section 78j(b) of Title 15 of the United States Code, and Sections 1341 and 1343 of Title 18, United States Code.

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2. It was a part of said conspiracy that the defendants JOHN M. KING and A. ROWLAND BOUCHER would and did devise and intend to devise a scheme and artifice to defraud FOF and Growth, their shareholders, directors and auditors, Arthur Andersen & Co., andother persons, and to obtain money and properties from the aforementioned individuals and entities by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice to defraud and attempting so to do would and did place and caused to be placed in post offices and authorized depositories for mail matter and would and did cause to be delivered by mail according to the direction thereon certain mail matter to be sent and delivered by the Postal Service.

3. It was further a part of said conspiracy that the defendants JOHN M. KING and A. ROWLAND BOUCHER would and did devise and intend to devise a scheme and artifice to defraud FOF and Growth, their shareholders, directors and auditors, Arthur Andersen & Co., and other persons, and to obtain money and properties from the aforementioned individuals and entities by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme and artifice and attempting so to do, would and did transmit and caused to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals and sounds.

4. It was further a part of said conspiracy that the defendants JOHN M. KING and A. ROWLAND BOUCHER unlawfully, wilfully andknowingly, by use and means of instrumentalities of interstate commerce and the mails would anddid directly and

EW:ma

indirectly use and employ in connection with the purchase and sale of securities, to wit, undivided interests in Canadian arctic oil and gas permits, manipulative and deceptive devices and contrivances in violation of Rule 10b-5 of the rules and regulations of the United States Securities & Exchange Commission.

5. The allegations contained in Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in Count Four of this indictment.

JRW:dlf

OVERT ACTS

In furtherance of said conspiracy and to effect the objections thereof, the defendants did commit the following overt acts, among others, in the Southern District of New York and elsewhere.

1. On or about December 23, 1969, the defendant A. ROWLAND BOUCHER sent a letter to NRC and AIL in New York, 286E New York, regarding arctic sales transactions.

2. On or about January 23, 1970, the defendants JOHN M. KING and A. ROWLAND BOUCHER signed a letter to Rpt Arthur Andersen and Co. assuring Arthur Andersen and Co. that the Mecom arctic transactions was a bona fide sale in all respects.

3. On or about January 21, 1970, the defendant A. ROWLAND BOUCHER caused a letter to be sent to New York enclosing documents relating to the arctic sales transactions.

4. In or about January 1970, the defendants JOHN M. KING and A. ROWLAND BOUCHER caused various information relating to the arctic sales and FOF's and Growth's revaluation to be forwarded to Arthur Andersen in New York.

(Title 18, United States Code, Section 371)

FOREMAN

PAUL J. CURRAN
United States Attorney

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PROBATION FORM NO. 7
(March 1973)

Conditions of Probation

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

#59898-JPV

To MR. JOHN M. KING

Docket No. 75 Cr 70

Address 26 Sunset Drive
ENGLEWOOD, COLORADO

In accordance with authority conferred by the United States Probation Law, you have been placed on probation this date, SEPTEMBER 7, 1975, for a period of THREE(3) YEARS by the Hon. MARVIN E. FRANKEL United States District Judge, sitting in and for this District Court at New York City, subject to the standing probation order of this Court (see other side).

CONDITIONS OF PROBATION

It is the order of the Court that you shall comply with the following conditions of probation:

(1) You shall refrain from violation of any law (federal, state, and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer.

(2) You shall associate only with law-abiding persons and maintain reasonable hours.

(3) You shall work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.

N/A (4) ~~You shall not~~ leave the judicial district without permission of the probation officer.

(5) You shall notify your probation officer immediately of any change in your place of residence.

(6) You shall follow the probation officer's instructions.

(7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows:

9/7/75: COUNTS 1, 3 and 4: ONE YEAR TO RUN CONCURRENTLY.
COUNT 2: IMPOSITION OF SENTENCE SUSPENDED. - UNSUPERVISED PROBATION FOR THREE(3) YEARS, AFTER RELEASE FROM CONFINEMENT.

(APPEALING.)

In order to insure compliance with the Conditions of Probation, you may NOT serve as an informer while on probation, and you must promptly and truthfully answer all inquiries directed to you by the Probation Officer.

I understand that the Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

I have read or had read to me the above conditions of probation. I fully understand them and I will abide by them. These conditions were made an Order of this Court, June 6, 1932 (see copy attached).

(Signed) _____ Probationer — Date 9/7/75

You will report as follows:

UPON RELEASE TO:

John T. Connolly
Chief U.S. Probation Officer
207 U.S. Court House
Foley Square
New York, N.Y. 10007

_____ U. S. Probation Officer — Date 9/7/75

/AZA

FPI-NI—3-14-75-60M-3502

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At a ~~Stated Term of the District Court~~ of the United States held in and for the ~~Southern District~~ of New York, in the United States Courthouse, in the Borough of Manhattan, City of New York on the 6th day of June, 1932.

PRESENT:

THE HONORABLES JOHN C. KNOX, HENRY W. GODDARD, WILLIAM BONDY, FRANK J. COLEMAN, JOHN M. WOOLSEY, FRANCIS G. CAFFEY ALFRED C. COXE, ROBERT P. PATTERSON

IN THE MATTER OF GENERAL CONDITIONS OF PROBATION where execution of sentence in criminal cases is suspended.	M-11-183 ORDER

Due deliberation having been had, it is

ORDERED, that effective June 7, 1932, the following shall be the conditions of probation applicable to all persons placed on probation by this Court.

1. The probationer shall not violate any State or Federal Penal Law.
2. He shall live a clean, honest, and temperate life.
3. He shall not frequent undesirable places and localities, nor shall he associate with undesirable persons.
4. He shall seek and continue in steady employment and shall immediately notify the Probation Officer of any change in or cessation of employment.
5. Upon change of residence, he shall notify the Probation Officer.
6. He shall not leave the jurisdiction of this Court without permission of the Probation Officer.
7. He shall contribute regularly to the support of those whom he is legally bound to support.
8. He shall follow the Probation Officer's instructions and advice regarding his recreational and social activities.
9. He shall report at such times and places as the Probation Officer shall direct.
10. He shall obey such other conditions ~~as may~~ be imposed by the Probation Officer to insure compliance with the foregoing provisions in paragraphs 1 to 9 inclusive.

Acceptance of probation by the defendant shall constitute acceptance of the conditions hereinabove set forth.

JOHN C. KNOX
U.S.D.J.
HENRY W. GODDARD
WILLIAM BONDY
FRANK J. COLEMAN
JOHN M. WOOLSEY
FRANCIS G. CAFFEY
ALFRED C. COXE
ROBERT P. PATTERSON

FILED
U.S. DISTRICT COURT
JUNE 8, 1932
S.D. of N.Y.

A 28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	75 Cr. 70 (MEF)
- v -	:	MEMORANDUM ON DEFENDANTS' POST-TRIAL MOTIONS
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

FRANKEL, D. J.

With characteristic thoroughness and scholarship, defense counsel have moved after verdict for judgments of acquittal and/or dismissal of the indictment. The court has concluded that the motions should be denied. Some of the issues thus determined, together with reasons for this result, are as follows.

1. Renewing a contention pressed before trial, defendants say the indictment should be dismissed for wrongful and prejudicial delay in presenting the charges to a grand jury. The point is urged earnestly, ingeniously, and at length. It is, nevertheless, no more impressive now than it was before the case was tried.

After a trial of some six weeks, the jury's deliberations were notably swift. It seemed evident that the evidence for conviction was clear and overwhelmingly persuasive. As defense counsel recalls in the present motion papers, defendants' "credibility was a critical issue in the case." (Affidavit of Michael P. Armstrong, Esq., sworn July 22, 1976, p. 29.)

dismissing for pre-indictment delay is not stronger in its remaining material aspect, the claim of prejudice. It is ne a good thing to have long delays between events and the effo to reconstruct them in lawsuits. Memories do fade. People die. Things are lost. Several instances of such regrettabl losses exist in this case. Viewed in perspective, however, they comprise no substantial picture of injury to the defend in fighting the charges against them. It is not necessary t track each of the items of lost or faded evidence defendants say they would or might have had if the case had been brough earlier. The specific items are treated by the Government i a response the court finds sound and sufficient in substanti every detail. (See affidavit of John R. Wing, Esq., sworn August 2, 1976, pars. 14-31.) It is sufficient to note that many of the claims thus refuted are improbable and conjectur to a large degree, most notably the things defendants "belie the late Mr. Cowett would or might have said. Some of the speculations, aside from their improbability, go beyond any plausible rationale the defense might have invoked had the witness survived.[1] Other claims of this nature relate to de of a peripheral and subordinate character, matters that coul not have been of consequence in the jury's deliberations. T whole account, seen in the light of the evidence, including defendants' own, that was available and heard, leaves the co with a definite conviction that defendants were not injured to any material extent by the lapse of time. To put the poi more positively, the testimony of some 49 witnesses and the large volume of exhibits appear convincingly to justify as

reliable and accurate the conclusions the jury declared it had reached beyond a reasonable doubt.

Thus, defendants show neither intentional delay for tactical advantage nor measurable prejudice, both of which would seem requisite to their position. United States v. Eucker, Docket Nos. 75-1246, etc., (2d Cir. 3-8-76), slip op. at 2468. Their application for dismissal or, alternatively, a hearing on the claim of pre-indictment delay will be denied.

2. A second argument in which both defendants join is another renewal of a pretrial position: that use immunity or derivative use immunity they acquired under §7(a)(10) of the Bankruptcy Act, 11 U.S.C. §25(a)(10), when testifying in bankruptcy proceedings was violated in their indictment (and then in their trial) requiring erasure of their convictions and dismissal of the indictment. The position has been re-examined at length and with care. Defendants, after the trial, were given extensive access to government files, records, and working papers. Defense counsel were permitted to cross-examine at length Mr. Thomson Von Stein, the SEC attorney who had investigated the pertinent events in 1973, had thus been instrumental in bringing about the criminal reference, and later came to assist in the preparation and conduct of the trial.[2] Accepting the credibility of the Assistant United States Attorneys who tried the case, defense counsel disclaimed any desire to interrogate them. Upon the amplified record, the court reaffirms the prior ruling.

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In treating this subject, the court assumes that the defendants' failure ever to claim immunity in giving their bankruptcy testimony is not a bar to the contention now made. See United States v. Dornau, 491 F. 2d 473, 480 n.13 (2d Cir.), cert. denied, 419 U.S. 872 (1974). It is also assumed, but with far greater doubt, that "taint" of the kind asserted could suffice to vitiate an indictment duly found and conviction so solidly supported. See id., 491 F.2d at 481 n. 15, and the reference there to United States v. Calandra, 414 U.S. 338, 345 (1974).

Proceeding from such assumptions, the court finds here a totally convincing demonstration by the prosecution that there was no use or derived use of the kind defendants posit. Clear, specific, and credible accounts are given to display the untainted sources of the Government's witnesses and other evidence. Cross-examination has not served to impair the persuasive showing made by the Government on this subject. For all their speculations before and after trial, defendants adduce no substantial grounds on which the court could reject the prosecution's position that the evidence to indict and convict was "derived from the independent sources described in the government affidavits." United States v. Boyd, 404 F. Supp. 413, 417 (S.D.N.Y. 1975), aff'd, Docket No. 75-1393 (2d Cir. 4-15-76). This is dispositive, apart from the several alternative refutations, including the independently sufficient proposition, which the court reaffirms, that the claimed immunity

was not available to defendant Boucher in any event.[3]

Defendants rely heavily upon the idea that the Government's burden to show the absence of taint is "insurmountable" or at least "virtually undischargeable" once it is shown that any government person saw any of the immunized testimony or any reflection of it. But the quoted adjectives come from a case, United States v. McDaniel, 482 F.2d 305, 311, 312 (8th Cir. 1973), where the immunized testimony, given before a grand jury, comprised three volumes (1) in which the defendant had "fully confessed his misdeeds" and (2) which "were read in their entirety by the United States Attorney * * * when * * * [he] was unaware that the testimony came pursuant to a grant of immunity, and he therefore could have perceived no reason to segregate * * * [the] testimony from his other sources of information." Id. at 311. Assuming that the impossible burden announced in the cited case would ever be prescribed in this Circuit, the present circumstances are notably different.

Apart from the fact that none of the material was read by the prosecutors herein, and little by the SEC attorney, defendants have been notably vague and inconsistent in saying what "leads" or other uses should be thought to have come from their bankruptcy testimony. Defendant King has said substantially nothing in response to the suggestion that he be concrete and specific in this respect. Defendant Boucher has offered some specific suggestions, but they are modest and unimpressive in the setting of the record as a whole. Indeed,

defendant Boucher, not required of course to be foolishly consistent, argues in a prior branch of his post-trial motions that the Government's case against him "totally and almost exclusively relies upon the testimony of one Robert Hulsey (Affidavit of Andrew J. Maloney, Esq., sworn July 22, 1976, par. 4), obviously not derived from or traceable to the bankruptcy testimony. And both defendants have argued strenuously in another connection that the evidence against them was largely available to the Government before and apart from any bankruptcy testimony.

In sum, assuming many issues in defendants' favor, including the proposition that the Government has a heavy burden to disprove taint, the court finds the burden to have been met in this case.[4]

3. There was a pretrial motion to change the venue to Denver, Colorado. The motion was substantial. For various reasons, however, including the seemingly inevitable prospect that Denver would be only a stopping-place preceding another shift (to avoid publicity), the motion was denied. Now, defendants argue the trial in New York denied them due process.

It seems evident, as it did before trial, that the proceeding here added to the hardships defendants would have borne in Denver, or in some other city nearer to Denver than this. Nevertheless, the post-trial claims scarcely approach due process proportions; upon analysis, they add substantially nothing to what was considered before trial. Defendant King

tenders a long list of "potential witnesses * * * who resided in the Denver area or points west * * *."[5] He does not say what evidence they would have given or, more importantly, why none of them was called. Similarly, he says it would have been enormously costly to subpoena scores of potential witnesses, tendering travel expenses, but the details are again vague, and it is by no means demonstrated that any such lavish course was necessary or appropriate. Once more, the factual predicate of the motion is speculative and unpersuasive.

Even the insistent claims of financial hardship have been left as bare arguments of counsel, despite opportunities and invitations for more solid documentation. It is the court's recollection that defendants were invited during trial to give financial statements, with the understanding that assistance under the Criminal Justice Act or by other means would be sought for them if at all possible on any plausible and generous appraisal of their circumstances. Defendants chose not to pursue this possibility, perhaps, as King's counsel now says on behalf of Boucher, because of "wrongful pride and the presence of a Denver news correspondent in the courtroom",[6] or for other humanly appealing and understandable reasons. The fact remains that mere assertions by counsel, without doubting their sincerity for a second, cannot sustain a due process argument for nullifying the verdicts in question.[7]

4. If the bounds of adversary fairness are narrower than those of love and war, it remains standard practice after conviction to charge "prosecutorial misconduct." Defense counsel, serving until recently as illustrious targets, follow the practice here at impressive length and with gusto. It seems sufficient to acknowledge that the prosecutors may have caused a blemish or two, marring the perfection for which we all strive in vain, and that references should be eschewed from now on to what kind of defense money can buy. It is also necessary and agreeable to add that these same prosecutors displayed through a long trial wholly admirable qualities of fairness, restraint, and professional rectitude. However isolated phrases look in post-trial briefs, this is a case in which the routine assault upon the prosecutors might perhaps have been foregone.

5. Other grounds of the motions have been dealt with orally or, in any event, require no additions to this memorandum.

Defendants' post-trial motions are in all respects denied.

So ordered.

Dated: New York, New York
September 1, 1976

U. S. D. J.

FOOTNOTES

1. For example, defendants suggest that Cowett maybe would have said he "authorized" side deals with the Arctic purchasers. Armstrong Affidavit, sworn July 22, 1976, p. 34. Or, defendants continue, Cowett might have known a King company gave Mecom the $275,000 for his down payment on a supposedly arm's length sale to Mecom. While such imagined testimony might have paved Cowett's way to jail, it is scarcely the kind of probable loss from which they can now show prejudice.

2. The sentence was adjourned for about three weeks beyond the original date (which had been set for some seven weeks after the verdict) to accommodate a generous schedule for preparation, briefing, and argument, all in addition, of course, to the months available for this subject prior to trial. After the hearing and a time for still further supplemental briefing, on August 25, 1976, counsel for defendant King delivered a letter reporting the discovery of further material that might be pertinent and requesting further delay to explore this material. The court declines to extend any further the time for resolution of this motion and the imposition of sentence.

3. Boucher is not helped by a new and strained suggestion that there was an invasion of "a zone of information that achieved a sanctity comparable to the confidential communications between attorney and client." Supplemental Memorandum 10.

4. The court would reach this result even if there had been some slight and accidental leakage from the bankruptcy proceeding to this one. The drastic remedy of voiding an indictment and conviction ought to be available, if at all, when the prophylaxis serves a substantial end, punishing some substantial invasion. Here, never claiming immunity, never seeking to have their testimony shielded from the widest dissemination in the press and elsewhere, defendants were in no sense whipsawed or imposed upon. On the other side, as the grand jury and trial minutes show, there was no purpose to evade or to slight defendants' rights. This would be, in short, a fortuitous and slightly magical reason for concluding now that defendants should not have been tried and convicted after all.

5. Affidavit of Michael F. Armstrong, Esq., sworn to July 22, 1976, par. 15.

6. Id., par. 18.

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7. In explaining this conclusion, the court has not overlooked, but has deemed it unnecessary to retrace, further points made by government counsel. It is fair to say, however, that such points have weight: e.g., the long and costly preparation defendants obviously did manage; the ample discovery they were given; the obvious friendliness to them of many of the people, including a large proportion of the Government's witnesses, having knowledge of the relevant events; and the probable willingness of many such people to stand ready to testify whether or not they were tendered travel expenses long in advance and on a standby basis.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :

Plaintiff, : 75 Cr. 70 (MEP)

-against- : AFFIDAVIT

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL F. ARMSTRONG, being duly sworn, deposes and says:

1. I am a member of the law firm Barrett Smith Schapiro & Simon, attorneys for the defendant John M. King. I am fully familiar with the facts and the prior proceedings in this case.

2. This affidavit is respectfully submitted in support of defendants' renewal of their joint motion, made pre-trial under Rule 12 of the Federal Rules of Criminal Procedure and renewed during trial (Tr. p. 2729-12) to set aside the jury's verdict and dismiss the indictment because of the Government's prejudicial delay in initiating its investigation and seeking the indictment.

3. Defendants renew their motion at this time based on facts which became known to them for the first time during the trial revealing that: (a) despite sworn statements by the Government in the pre-trial motions that the SEC had no knowledge of the factual allegations of fraud underlying this case until July 1973, uncontroverted documentary evidence establishes that by March 1971 the SEC had been informed of

all such factual allegations, all relevant witnesses and all the key documents used by the Government to prove the allegations at trial; and (b) the almost 2-1/2 year delay in initiating an investigation into these allegations caused irreparable prejudice to the defendants because of the deaths of witnesses, the destruction of relevant records, the fading of witnesses' recollections and, most significantly, the destruction in 1972 of the alleged signed original of the supposed buy-back agreement, whose terms, date of preparation and very existence were absolutely crucial issues at trial.

4. Alternatively, the defendants respectfully submit that, at the very least, they are entitled to a hearing at which the Government would be required to produce all internal correspondence, memoranda and other documents bearing on the Government's early knowledge of the facts of this case and the reasons for delay and to make available as witnesses those Governmental personnel who have knowledge of such matters, particularly those who apparently have presented false or misleading information to this Court.

PRE-TRIAL MOTION

5. On March 19, 1975, a motion was filed by Boucher, joined in by King, seeking dismissal of the indictment under Rules 12 and 48, on the grounds that the Government was guilty of forum shopping and had unreasonably delayed its investigation of the facts of this case, after learning those facts in 1970. The affidavits and legal memoranda filed by the parties in connection with this motion are attached hereto as Exhibits A through C.

6. In its reply papers, the Government denied under oath any conscious forum-shopping or unwarranted delay, stating that it had no knowledge of facts which would have justified an investigation until July of 1973. The prosecutor met defendants' charge that the SEC and the United States Attorney's Office in Denver knew of the alleged fraud since 1970 by stating, "To the best of my knowledge, information and belief that is simply not the fact" (Ex. D, p. 4 ¶ 8). The prosecutor stated that Stanley Sporkin, SEC Director of Enforcement, had advised him that Sporkin had a telephone conversation with Boucher in 1970 about some of the facts of the case but that no reference to fraud was made and the SEC, lacking any knowledge of such fraud, did not conduct any investigation of the facts until July 1973 (Ex. D, pp. 5-6). The SEC's only involvement in the case, according to Mr. Sporkin, was its awareness in January 1970 of publicity relating to the revaluation of FOF Arctic properties and its "periodic inquiries of IOS attorneys concerning the details of the transaction" (Ex. D, p. 6 emphasis in original).

7. The prosecutor also stated in his affidavit that "[d]efendant's suggestion that the SEC office in Denver was investigating this matter in 1970-1972 is also contrary to fact" (Ex. D, p. 7). He stated that he had been advised by Joseph Krys, an SEC attorney in Denver, that questioning of Boucher and King in 1970, 1971 and 1972 concerned "matters other than the Arctic sale" (Ex. D, p. 7).

8. The prosecutor further swore "on information and belief" that a grand jury investigation beginning in April, 1973 in Denver into the defendants' activities

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involved "completely different fraud matters" which "did not concern the Arctic sales which are the subject of the instant indictment" (Ex. D, p. 3). An affidavit joined in by four Denver Assistant United States Attorneys was submitted in support of this contention which stated: "At no time did the grand jury investigations focus on Fund of Funds and the evaluation and sale of Arctic properties" (Ex. D, Spurgeon aff't p. 2).

9. In an opinion dated June 2, 1975 denying defendants' motion, the Court ruled that demonstrations of prejudice "that the delay was an intentional device" would be most appropriately made after trial. A copy of the Court's opinion is annexed hereto as Exhibit E.

10. The trial is now over and the proof has been presented. It is respectfully submitted that the proof demonstrates:

(a) In March, 1971 the SEC, specifically Mr. Sporkin and representatives of the Denver office, had investigated and was fully aware of all of the significant documentary and testimonial evidence leading to this indictment. The Government's failure to pursue the case during 1971, 1972 and half of 1973 was clearly "intentional" and the statements made by SEC and other governmental personnel in pre-trial affidavits to this Court were at best disingenuous and at worst outright falsehoods.

(b) For approximately 2-1/2 years, the Government did nothing but sit back and wait for further evidence to emerge in civil and bankruptcy litigation. During this period the defendants had no knowledge of their jeopardy and no reason to seek or to preserve evidence that might prove their

innocence. The Government's delay caused the trial date to be put off to a time when key witnesses had died and vital documentary evidence had been lost. The most significant document in the entire case, the alleged signed original of the supposed buy-back agreement in the Mecom transaction, was destroyed while the Government waited.

DISCLOSURE DURING TRIAL OF THE GOVERNMENT'S EARLY KNOWLEDGE OF THE CENTRAL ALLEGATIONS IN THE CASE

11. On June 4, 1976, in the third week of trial, the Government turned over to defense counsel, pursuant to 18 U.S.C. 3500, material relevant to the testimony of Armand Frederickson, formerly a member of the KRC Board of Directors and Director of KRC Technical Properties.*

12. Included in the material with respect to Mr. Frederickson was a memorandum of a March 10, 1971 interview of Mr. Frederickson by John J. Kelly, Jr., an attorney in the SEC's office in Denver. A copy of this memorandum (GX. 3525A, DX. CG) is annexed hereto as Exhibit F. According to Mr. Kelly's trial testimony, this memorandum was based on notes taken during the interview and was prepared as soon as the interview was over (Tr. 4004-06). It demonstrates that by the date of the Frederickson interview the SEC had full knowledge of all relevant allegations with respect to the two central transactions in the case, the Mecom and Consolidated Oil and Gas deals.

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* On Wednesday, June 2, the Court had ordered the Government to turn over all 3500 material by Friday, June 4, 1976. The Frederickson material had been repeatedly requested but was not turned over until June 9, six days before his testimony because the Government stated that its Xerox machine had malfunctioned.

The Mecom Transaction

13. The March 10, 1971 memorandum reveals that Frederickson told Kelly that he had access to "a lot of documents which would prove that there were a lot of side deals between King and others" and that Frederickson showed Kelly a document from a then unnamed author who claimed that he had been "present" and had seen the contract between King Resources Company ("KRC") and John Mecom, Sr. calling for Mr. Mecom's downpayment of $275,000 toward the purchase of interests in Arctic properties in late December 1969, and that there was a side agreement which did not appear in the contract which called for "John King to provide the money for the downpayment; and to provide the drilling contract on the properties to Mecom which would assure sufficient net profits to cover the additional payments to be made by Mecom toward the purchase of his interests in the properties; and a buy-out agreement from King to Mecom ." Frederickson also showed Kelly (a) a document appearing to be "a handwritten note signed by Timothy Lowry" which "said something about he (Lowry) was going to keep the attached King letter to Mecom in Chicago along with other valuable papers"; (b) the letter referred to in the memo, which was described by Kelly as "a letter from John King to John Mecom in which Mr. King stated that he would provide the $275,000 downpayment to Mecom and, in addition, would assure Mecom sufficient drilling profit to cover additional payments and also gave Mecom, Mr. King's buy-out agreement"; and (c) a copy of a check in the amount of $275,000 payable to Mecom which Frederickson stated "was the way that John King paid monies to Mecom so Mecom could make his downpayment on the Arctic property."

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14. These four documents, the letter (GX. 6H), the Lowry note (GX. 1), the alleged buy-back agreement (GX. 1), and the check (GX. 6L) were the key documents offered by the Government at trial to prove the existence of secret side agreements between King and Mecom. The last three of these documents constituted the only direct documentary evidence of any such agreement. The prosecutor told the jury in his summation that these documents, particularly GX. 6H, were the reasons why an indictment was returned against these defendants (Tr. p. 4328).

15. Although Frederickson declined to turn the documents over to Kelly at the time of the interview, the SEC could certainly have subpoenaed them at that time and, more significantly, could have inquired directly of Lowry with respect to the original signed document which, according to Lowry's trial testimony, was still in his safe in Chicago and would remain there for ten more months until January 1972 (Tr. 1408). An inquiry of Lowry would have led directly to Neal Marriott, the individual who supplied the documents to Frederickson, even if Frederickson remained unwilling to reveal his identity. Marriott would have led to John Mecom and Bob Hulsey and in short order the Government would have had the fresh testimony of all the witnesses who ultimately testifed at trial about this transaction as well as the document, if it existed, around which their testimony centered.

16. Copies of Mr. Kelly's memorandum were sent to Mr. Sporkin,* and Mr. Richard Rowe of the Corporation Finance Section of the SEC.

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* Mr. Sporkin then as now was the man directly in charge of the SEC's investigative arm. His title at that time was Director of the Division of Trading and Markets.

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17. The Government cannot claim that the information Frederickson supplied was of an isolated nature. He had previously been interviewed on February 17, 1971 by Mr. Kelly and by Mr. Joseph Krys, Assistant Regional Administrator of the Denver SEC office, and copies of a memorandum of that interview were sent to Mr. Sporkin, Mr. Rowe and two other SEC officials. A copy of this memorandum (GX. 3525K) is attached hereto as Ex. G. In this interview, Frederickson had revealed a combination of speculations and alleged facts with respect to a number of supposedly illegal activities being engaged in by King and Boucher. He specified the Arctic transactions with Consolidated Oil and Gas, John Mecom, John King and Lakeshore Associates. He speculated that the Arctic deal "like most of John King's deals, follows a pattern where things look good in the contract, but the contracts are not the deal." He stated that, "John Mecom supposedly put up $275,000 as an initial payment on the Arctic properties, but the money came from John King, who got the money from The Colorado Corporation." He spoke of King's furnishing money to purchasers like Mecom to establish market prices in return for side deals.

18. Sporkin's receipt of these memoranda stands in flat contradiction to his pre-trial statement that the SEC had no knowledge whatever of information regarding the allegedly illegal aspects of the Arctic transactions. In addition to the information which Boucher, the company's president, had supplied directly to Mr. Sporkin in the May 1970 telephone conversation referred to in defendants' pre-trial motion, Mr. Sporkin and other SEC officials now had specific information from a senior executive and board member, Mr. Frederickson, which laid out in detail every factual

charge with respect to the Mecom transaction which ultimately became the basis for the criminal charges in this case.

Consolidated Oil and Gas

19. Mr. Kelly's memoranda of his conversations with Frederickson also contain relevant information about the Consolidated Oil and Gas ("COG") transaction. In the February 17 interview, Frederickson referred to the COG transaction, saying "a great deal was paid for the properties, and there must have been some side deals." He suggested that the SEC speak to Harry Cooper (chief of KRC's Western Division) who, he said, would be able to give information about the COG transaction.

20. In the March 10 interview, Frederickson became more specific. He told Kelly that "Consolidated Oil and Gas purchased interests in the Arctic property from King Resources around the time that IOS purchased the properties and that Consolidated's purchase price enabled IOS to make a profit on the Arctic transactions since IOS had purchased the properties at a lesser price than Consolidated." Frederickson zeroed in on the only transaction used by the Government to prove a side deal regarding COG - the Bristol Bay transaction. He said "there was a side deal to this whereby King Resources purchased a 'bunch of moose pasture' from Consolidated" which was located "in the Bristol Bay area of Alaska." Mr. Frederickson further erroneously stated that "this Bristol Bay transaction was written up as if it had occurred six months after the Arctic transaction but, in fact, it occurred at the same time." Frederickson stated that Harry Cooper "looked into this Alaskan, Bristol Bay land and found out it was a bad deal as the acreage was very poor . . . Cooper complained about this transaction but he was told to keep his mouth shut."

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Frederickson told Kelly that he had informed Cooper about his visits to the SEC and that "he believed that Mr. Cooper would furnish information to [the SEC] about the Bristol Bay transaction."

21. On March 16, 1971, Mr. Cooper was interviewed by Mr. Krys and John F. Wassberg of the SEC's Denver regional office. A copy of the memorandum of this interview (GX. 3516(c)) is annexed hereto as Exhibit H. Mr. Cooper was questioned about the Bristol Bay transaction and "denied that the transaction was part of a package deal with Consolidated Oil and Gas or that there were any related transactions made either before or after this purchase in February 1970. He said that if [the SEC] had contrary information he was unaware of it." Copies of the memorandum of the interview were sent to Mr. Sporkin and to Mr. Rowe.

22. To the knowledge of the defendants, the Cooper interview was the only attempt made by the SEC to follow up on the information Frederickson gave to the SEC and no apparent effort was made to resolve the differences between his testimony and that of Frederickson.

23. Once again, the statements of Mr. Sporkin and the Denver office of the SEC in the pre-trial motions in this case are squarely at odds with the facts. Mr. Sporkin was thoroughly familiar with the COG transaction from his exposure to it in 1970, but supposedly knew nothing about alleged improprieties which would have warranted investigation. In fact he had received detailed memoranda of three interviews dealing with such allegations and indicating a conflict in testimony that the SEC had an obligation to resolve promptly. Mr. Krys, upon whom the prosecutor relied in saying that the

Denver SEC office was unaware of relevant information, actually participated in two of these interviews.

24. Thus, in March 1971, the SEC was on notice of a specific charge of a side agreement relating to the Consolidated Oil and Gas transaction and was directed to the only transaction ultimately used by the Government to prove its major contention, that COG was to be provided with net cash receipts from business with KRC.

25. The contention about net cash receipts was one of two which the Court allowed the jury to consider regarding the COG transaction (Tr. p. 4534). The other concerned an alleged buy-back agreement. By 1971 the SEC had long been in possession of the only proof adduced at trial with respect to any such alleged agreement -- The Wall Street Journal article written in May, 1970 by James C. Tanner. This article had led to a suspension of trading in COG stock and SEC personnel, including Mr. Sporkin, were deeply involved in examining the whole transaction in the course of the preparation of a letter to COG shareholders issued prior to the lifting of the suspension. It was on that occasion that Mr. Sporkin telephoned Mr. Boucher to inquire about the Arctic transactions and, specifically, the COG deal.

26. Therefore, as a result of the SEC investigation in 1970 and the information received from Mr. Frederickson in 1971, the SEC -- and Mr. Sporkin -- had in its possession the principal evidence which ultimately was used at trial to discredit the COG transaction. SEC personnel handled the information with respect to COG in a similar fashion to the way they handled the information with respect to

the Mecom transaction -- they did nothing and, when asked prior to trial about their activities, claimed falsely that they had known nothing.

The Government's Intentional Delay

27. As demonstrated above, there can be no question that the Government's delay in investigating this case was not, as previously represented to this Court in connection with defendants' pre-trial motions, due to lack of knowledge. The Government had the relevant information and the failure to proceed promptly with a formal investigation could only have been a conscious and intentional decision.

28. The Government had an obligation promptly to investigate Frederickson's very serious but essentially hearsay charges in order either to corroborate them or to exonerate potential defendants. To do so directly, however, would have alerted the defendants to the need for assembling evidence to defend themselves. At that time both defendants were financially much more able to prepare their defenses than they were three years later and had much greater access to corporate documents which could aid them. Boucher was president of KRC and, through him, the defendants would have been in a position to arrange for file searches which became impossible once Boucher was no longer with KRC and the documents were almost exclusively in the hands of a trustee in bankruptcy whose interests were opposed to those of the defendants.

29. By holding off on a formal criminal investigation, the Government stood to gain access to testimony and documentary evidence which would be forthcoming in the many civil

lawsuits arising from KRC's problems without alerting the defendants, and other persons who might be considered potential co-conspirators to the fact that they were in jeopardy of criminal prosecution for these particular activities. A list of civil lawsuits concerning matters relating to KRC and the defendants is attached hereto as Exhibit I.

30. The various bankruptcy proceedings also provided a fruitful source of information. As discussed in the papers filed in connection with the pre-trial motion, the KRC trustee conducted an investigation of the very facts of this case, culminating in a report dated October 10, 1973 (attached hereto as Exhibit J) which was apparently received by the Government in the fall of 1973 (see Wing letter dated May 19, 1976, attached hereto as Ex. K).

31. The Government also benefitted by being able to gather information through another criminal investigation which was "focused" on other matters. On April 27, 1973, the SEC referred two cases relating to these defendants to the United States Attorney in Denver for grand jury action. The transactions which were being investigated, as described by the Government, were so closely related to those which were the basis for this case that the Government sought to introduce at trial evidence of those transactions as similar acts. Many of the same SEC personnel working on the Denver case, including Mr. Kelly and Mr. Krys, were assigned to this one when an order of investigation was finally ordered (Formal order of Investigation dated July 24, 1973, attached hereto as Ex. L).

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Nevertheless, the Arctic transactions were not formally included in the Denver investigation. This arrangement enabled the SEC to investigate the defendants under the guise of looking into one set of transactions -which never led to indictment -- and at the same time gather information with respect to the charges that ultimately led to the indictment in this case. The 3500 material turned over at trial reveals that inquiry about the Arctic transaction was made in the Denver grand jury during the testimony of Roger Davis (GX 3502F, pp. 58-68) and Bennett King (GX 3508B, pp. 20-22). Since defendants do not have access to the full record of the Denver grand jury investigation, they have no idea of how many other witnesses were similarly questioned.

32. Moreover, by holding back on the Arctic transactions, the Government got "two bites at the apple" in different districts at different times. The Government's affidavits in response to defendants' pre-trial motions were as disingenuous with respect to forum shopping as they were with delay. As set forth above, an affidavit was submitted from four Assistant United States Attorneys who handled the Denver investigation, stating that the "focus" of that investigation was on topics other than those covered in the indictment in this case. The defendants' point, of course, had nothing to do with the focus of the investigation, but rather with whether or not the Government had enough information to investigate the issues in this case and whether or not they deliberately decided to bi-furcate their investigation so as to gain a tactical advantage over their targets they might have been "focusing" on.

Prejudice to the Defendants
Resulting from the Government's Delay

33. The Government's failure to investigate with reasonable promptness the allegations of wrongdoing leading to this indictment deprived the defendants of the ability to defend themselves effectively. Specific areas of prejudice are as follows:

(a) Government Ex. 1: The only piece of documentary evidence in the case directly evidencing a buy-back agreement was the unsigned draft dated December 1969 (but concededly prepared some time later), which was part of Government Exhibit 1. Timothy Lowry, the attorney who allegedly drafted this document, testified that a signed original in similar terms had been placed in his safe in 1970 and had remained there until January 1972 when, in the course of moving his office, he found the now out-of-date document and destroyed it. (Tr. 1403-08).

As of March 10, 1971, the Government had a full description of the alleged buy-back scheme, had seen a copy of the alleged buy-back agreement and had the identity of Mr. Lowry, the alleged author and custodian of the agreement.

At any time during the next ten months, the Government could simply have asked Lowry for the document. Had they done so, questions relating to the document's existence, its precise

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terms and, perhaps, the date it was prepared and executed, could have been conclusively determined.

All three of these elements were vital to the defendants' contentions at trial and, instead of having the document, they were forced to match the Government's speculations with respect to it with equally inexact speculations of their own.

Only Lowry (Tr. 1439) testified to the existence of a signed original. No one else was called by the Government to testify that he had ever seen one. King did not recall signing such a document (Tr. 3539). Lowry had stated in prior testimony given in February 1972, only a month after he had allegedly destroyed the document, that a buy-back agreement with Mecom had been "discussed" and "talked about" but never executed (Tr. 1414-18, GX. 3507V). He had reviewed the transcript of this portion of his testimony shortly after giving it (Tr. 1418) and at trial could offer no explanation for it (Tr. 1418, 1420-21).

Lowry had prepared other such agreements for John King and could easily have been confused with respect to whether the one he found in his safe related to the Mecom deal. In prior sworn testimony Lowry had not been sure that the document was signed (Tr. 1438-39, GX 3507P) or whether he had drafted it (Tr. 1402, GX 3507P, 3507G) and he even stated at one point that he might have signed it himself (Tr. 1437, GX 3507H).

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This confusion is understandable since Mr. Lowry is 71 years of age, has recently been in failing health and during the last year underwent a serious cancer operation.

Other circumstantial evidence points to the fact that the copy of the alleged buy-back agreement included in Government Exhibit 1 was either a preliminary draft or a forgery and that even though discussions may have taken place with respect to the possibility of a buy-back agreement, none was ever agreed upon. For example, Neal Marriott, Mecom's lawyer, testified that when he received the unsigned document, it did not reflect the agreement as he understood it (Tr. 1023). Nevertheless, when he got around to contesting the legitimacy of the underlying contract between Mecom and King Resources (at the same time when Mecom shifted his position in his bankruptcy proceeding from acknowledging the contract to challenging it), Marriott took no steps whatsoever to attempt to obtain the original document.

The defendants maintain that there never was an agreement of the sort charged by the prosecution. The Government's delay in taking the most elementary investigative steps to follow up on Frederickson's allegations deprived the defendants of the opportunity of proving their contention.

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The precise terms of the signed agreement, if any such agreement did in fact exist, are also of vital importance to the defendants and, in the absence of the document itself, were left to be reconstructed on the basis of conflicting testimony and lapses of memory. The terms of the agreement were important because of the fine line between an outright commitment by John King or KRC to buy-back the permits or to provide specific work in order to give Mecom the money to meet his obligations under the Arctic contract (which would have impacted the arm's length nature of the deal) and an agreement which might have reflected an understanding with respect to other unrelated business dealings which would have provided Mecom with profits with which he could, if he chose, meet his Arctic payments. The testimony at trial with respect to the terms of the alleged side-agreement between Mecom and King was a hodge-podge of contradictions, ranging from an alleged agreement by KRC for a divided interest in specific acreage (Mecom, Tr. 923-24) to a buy-back agreement by King personally (Lowry, Tr. 1465).

Documents purporting to refer to the agreement are equally inconsistent. For example, Marriott's letter to Frederickson of February 19, 1971 (GX 6H) describes a different side agreement than the one reflected in the draft that was supposed to have been enclosed (GX. 1) and neither matches the document described by Mr. Kelly as the one shown to him. The memorandum from

Marriott to Mecom dated January 2, 1970 describing the documentation which was to be provided (GX 6D) speaks of "cross-letters", not a final document. The unsigned draft itself is an informally and sloppily drafted document on original bond paper without a letterhead and with Lowry's name misspelled (the fact that the name Lowry is spelled correctly in referring to the name of his law firm is explainable if the person who drafted the document wrote it out in long-hand and gave it to a secretary to type and fill in the firm name, but this explanation applies only to someone other than Lowry himself). Lacking the original document, both the Government and the defense were reduced to speculating about its terms.

The absence of the original document also made it impossible to establish the date when any buy-back agreement which may have existed was prepared and executed. This question was vital in the light of the fact that any side agreement must have been made contemporaneously with the underlying agreement in order for it to be illegal (Tr. 4533-35).

The defendants point to Defendant's Ex. BA, a memorandum of a telephone conversation between Mecom and King on February 10, 1970 in which Mecom stated that he needed some assurance to present to his bankers with respect to his obligations under the Arctic contract and in which King said that he would be glad to buy the interest back if it

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became necessary to do so. If, pursuant to this conversation, a document had been drafted by Lowry, either in draft or in final form, it would not have had any effect upon the charges in this case. The testimony in the case with respect to when the alleged buy-back agreement was drafted was characteristically confused. Marriott testified that he received the document on January 27, 1971 (Tr. 1030-31), although he had previously testified that he had received it in the first week in January (Tr. 1074-75, 1101-04, GX 3519A) Lowry testified that he recalled drafting it early in January, but conceded that it could have been drafted in February (Tr. 1446).

Had the Government investigated promptly, it would not have been difficult to ascertain the actual date when any alleged buy-back agreement was drafted and executed. It is not unreasonable to think that if Lowry prepared a document and put it into his safe that he made some sort of notation as to when it was put there or that a secretary would have remembered when it was prepared.

(b) Carbon copy of alleged buy-back agreement: During trial the Government sought to introduce a carbon copy of the alleged buy-back agreement which was taken from the KRC files. Because of the lapse of time and the shifting custody of these files, it was impossible properly to authenticate the

document (Tr. 4083-87, 4138-52), and Lowry testified that he did not recall it (Tr. 1469-1471). Although the document traces exactly the language of the buy-back agreement up to the last paragraph, it is apparent that it is not a carbon of the document which is part of Government Exhibit 1 because it does not have the same number of words to the line. Moreover, the last paragraph is worded differently and, while the name Lowry is spelled correctly, it is omitted from the name of Lowry's law firm. Thus, there apparently were three different documents which supposedly reflected the same non-existent signed agreement -- the one put in evidence by the Government, the one shown to Mr. Kelly, and the carbon. These documents raised more questions than could be answered either by the Government or by the defendant. Had the Government investigated promptly in 1971, the secretary who prepared the carbon probably would have remembered it and the file from which it was taken could have been examined to determine when the document was prepared and filed (the Government called a former KRC secretary whose initials appear on the carbon in an attempt to authenticate it, but she could not do so and, indeed, had been out of the office for almost two weeks prior to the time when Neal Marriott says that he received his copy of the document). Defendants resisted the admission into evidence of this carbon because it would have added

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one more area where the Government's speculations would have been matched against the defendants'. No such speculations need have been necessary if the Government had investigated the matter in a timely fashion.

(c) Mecom's phone records: I was informed by the Government prior to trial that Mr. Mecom's telephone records are no longer in existence. These records would have assisted defendants in corroborating the fact of the February 10 phone call between Mecom and King, which defendants contend was the only occasion upon which any buy-back agreement was discussed.

(d) Marriott's Diary: In an interview on April 15, 1976, Mr. Marriott informed me that he had lost his diary for 1970. In the light of Marriott's contradictory and ambiguous testimony with respect to when he received the alleged buy-back agreement and when he discussed it with Mr. Lowry, this diary would have been crucial. The diary also would have been helpful to clear up Marriott's allegedly confused recollection of his contacts with Hulsey and other KRC personnel during 1970 when, according to his testimony, KRC owed Mecom a side-agreement which had never been provided and which left Mecom legally bound to a contract he had signed but to which he had not agreed. Marriott's meetings and conversations with various KRC people would have been reflected in his diary. Moreover, Marriott testified that he continuously

raised the subject of the side agreement with Hulsey throughout 1970 (his testimony on this point was much stronger on prior occasions (Tr. 1075-78, GX 3519C), but Hulsey testified that he never talked to Marriott on the subject after the first week in January 1970. Marriott's diary would have been helpful to shed light on this contradiction.

(e) Tanner's Notes: Mr. Tanner, the only witness in any way supporting the Government's allegation of a buy-back agreement with respect to COG, had destroyed his notes by the time he was called to testify in this case. Mr. Tanner, a reporter for The Wall Street Journal, testified that he had written an article based on an interview with Harry Trueblood, president of COG, in which Trueblood said that he could turn the property back whenever he wanted to. Mr. Trueblood contended that any such statement related to his dissatisfaction with KRC's performance under the contract and his belief that he had legal reasons for voiding it. In a prior statement, Mr. Trueblood had stated that the quotation was taken out of context. Mr. Tanner had no recollection of the conversation and, again, the whole issue was left to speculation as to what was meant by a sentence in a newspaper article. A prompt investigation -- which in this case could have commenced as early as 1970, when the COG issued was raised before the SEC -- would have had the benefit of a fresh recollection by Mr. Tanner assisted by

the notes which he took in order to prepare his article.

(f) Neal MacKenzie: At the close of the trial the Government attempted to introduce into evidence a tape recording of a KRC Board of Directors meeting at which Neil MacKenzie, a director who was in charge of the Canadian operations of KRC and, as such, was presumably knowledgeable about the Canadian Arctic, stated in response to an interrupting questioner that the price paid by Mecom and COG was "ridiculous". Mr. MacKenzie moved to South Africa about a year and one-half ago and, although he was under Government subpoena, the Government stated they would bring him here only at the defendants' expense. I spoke on the telephone with Mr. MacKenzie and he stated that he did not recall, but also did not deny, making that remark and, thatif he had, he would have been "out of line" because he was not involved in the Arctic transaction. Mr. MacKenzie's testimony obviously would have been of help to the defendants in rebutting an otherwise unanswered hearsay statement by an individual which the prosecutor represented in his summation to be "[t]he man who probably knew that area the best of all in the entire company, Mr. Neil MacKenzie, tells Boucher that the price was ridiculous and Boucher doesn't deny it." (Tr. 4457). Had the trial occurred at a reasonable time following the events, Mr. MacKenzie would have been readily available as a witness.

(g) Edward M. Cowett: The defendants submit that the evidence adduced at the trial demonstrates, as presaged by the defendants in their pre-trial motions, that they were significantly prejudiced by the unavailability of Edward M. Cowett, who died in August 1974. As far as the relationships between KRC, FOF and IOS are concerned, Mr. Cowett played the key role in the transactions involved in this case. He ran, in an operational sense, both IOS and the natural resources property ventures of FOF (Tr. pp. 268-70). In these roles he was the person responsible for deciding which properties FOF should buy from KRC (Tr. pp. 103; 302-06) and he reported "often" to the FOF Board on developments in the Natural Resources Fund Account (Tr. p. 110), including those relating to the Canadian Arctic. In mid-1969, the FOF Board authorized Mr. Cowett to obtain outside help in evaluating the Arctic properties in order to see whether a revaluation was required (Tr. pp. 116-18). He also played an extremely active role in deciding how much of FOF's interest should be sold, the price at which it should be sold and the kinds of purchasers to whom it should be offered. In addition, he had extensive discussions about the Arctic transaction with Arthur Andersen (Tr. pp. 256-57) and represented to the accountants, as did King and Boucher, that the Mecom and Consolidated sales were arm's length transactions. After the sale, Mr. Cowett provided the FOF Board with a detailed explanation of the Arctic transaction (Tr. pp. 210-11). Of course, only Mr. Cowett could have

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provided the full particulars of his knowledge of and involvement with the facts of this case.

Mr. Cowett played such an active and significant role in connection with the Arctic revaluation that in July 1973, when the SEC finally got around to issuing a formal order of investigation, Mr. Cowett was identified as a target of that investigation. The SEC order of investigation (previously submitted to this Court as an Exhibit to Boucher's affidavit of March 19, 1975) stated that members of the SEC staff had reported information to the Commission which tended to show that King, Boucher and Cowett, as well as unnamed officers and directors of IOS, FOF and KRC, had made untrue statements of material facts or had omitted to state material facts in violation of the federal securities laws in connection with sales of undivided interests in oil and gas properties. Among the SEC staff members who were designated by the Commission to conduct the investigation were Joseph F. Krys and John J. Kelly, Jr., both of whom had interviewed Frederickson more than 2 years prior to the SEC order.

More than another year would pass before the SEC would decide to refer the Arctic transaction to the Department of Justice for criminal proceedings. Curiously, that decision was made just one month after Mr. Cowett's death -- he suffered a fatal heart attack shortly after having testified before a Denver grand jury in August 1974. Mr. Cowett's death appears to have prompted re-thinking by the Government

of his role in the alleged conspiracy. Instead of seeking to blame a dead man for the alleged fraud, the Government changed its theory and argued that Mr. Cowett, far from being a guilty party, had been duped by the defendants. The Government argued throughout the trial that FOF and Mr. Cowett had been continuously misled by the defendants as to the terms of the transactions between FOF and KRC, the nature of KRC's mark-ups, and the value of the properties sold to FOF. Indeed, the prosecutor went so far as to state in response to the pre-trial motions that if Mr. Cowett were alive he would have aided the Government's case rather than exculpate the defendants. Presumably the prosecutor meant that Mr. Cowett would have denied knowledge of the material aspects of the FOF-KRC relationship. The defendants submit that it is much more likely that they would have been able to show, and that Mr. Cowett would have admitted under oath, that both he and Mr. Cornfeld were well aware of and encouraged KRC to deal with FOF in the manner it did. This was precisely the conclusion reached by the KRC trustee in his report to the bankruptcy court in Denver. See Exhibit B-1 to Mr. Wing's May 19, 1976 letter to the Court.

We submit that if Mr. Cowett had lived, the Government would have sought to make Mr. Cowett a defendant and proceed on the theory that the defendants acted as they did so as to assist FOF and IOS to withstand the flood of redemptions with which

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both those companies were faced in late 1969 and 1970. The defendants would have denied any such allegation and Mr. Cowett could hardly be expected to have acquiesced in any such theory. Rather he could be expected to have actively participated in a joint defense at the trial. The defendants contend that the change in direction taken by the Government following Cowett's death was effected so as to make it simpler to obtain a conviction against these defendants. Under such circumstances, there was no conceivable way in 1976 for these defendants to have demonstrated the extent of Mr. Cowett's knowledge and information with respect to the facts of this case and to rebut the argument that he had been continuously misled and deceived by the defendants.

Throughout the presentation of its case and the cross-examination of the defendants the Government sought to establish, time and time again, instances where FOF, and especially Mr. Cowett had been deceived by the defendants. The reason for this approach was obvious. While the case could have been strictly limited to the question of whether there were any secret inducements made to John Mecom and COG, the Government could not prove that either of the defendants benefitted directly from the Arctic revaluation. Accordingly, the Government sought to establish a motive and to poison the jury against the defendants by describing a course of dealing between KRC and FOF which the Government claimed was fraught

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with deception and which unjustly enriched the defendants. In this connection, the Government cited the Fox-Raff transaction, the undisclosed mark-ups, interim valuations of various oil and gas properties, and statements about potential purchasers for the Arctic interests from among large oil companies and the future revenue potential of FOF's Arctic investments. In short, what the Government argued at the trial was that the defendants had, from the beginning, defrauded FOF and were in fact robbing the "FOF Bank" with lies instead of a gun (see prosecutor's summation, Tr. at pp. 4259, 4268 and 4323). The prosecutor also attempted to utilize the alleged deceptions of Mr. Cowett and FOF on cross-examination in an attack on the defendants' credibility. Since both defendants testified extensively, their credibility was a critical issue in the case.

The areas where the Government charged that the defendants had deceived Mr. Cowett and FOF included the following:

(1) The sale of a 10% undivided interest in certain oil and uranium properties to Fox-Raff, Inc. in December 1968: The Government argued that this transaction was effected in order to impress FOF and IOS with the performance of the NRFA. If Mr. Cowett were alive he would be able to testify with respect to the significance of this sale and whether he in fact was misled. Mr. Cowett's testimony would have been particularly relevant as to this transaction since he had

direct contact with Mr. Raff subsequent to the sale (Tr. p. 749). He would have been able to state whether or not Mr. Raff ever complained that he had received promises from the defendants which had never been kept. Mr. Cowett could also have aided the defendants' credibility by explaining the significance to FOF's evaluation of KRC's performance of the subsequent downward revaluation in June 1969 of the properties sold to Fox-Raff just a few months earlier (Tr. pp. 2135-36).

(2) The purported negotiations with a major oil company during the summer of 1969: At the trial, the Government argued to the jury that Mr. Cowett did not play any role in these negotiations and suggested that, in fact, no such negotiations had taken place. The Government argued that King and Boucher had deliberately misled Mr. Cowett and FOF as to the value of the Arctic by telling them that a major oil company was prepared to pay FOF $5.15 an acre for a substantial interest in the Arctic. This had a severe impact on the defendants' credibility, because they were unable to identify at trial the major oil company with whom the negotiations had been conducted. It is clear that Mr. Cowett would have been able to provide relevant testimony on this point, as Mr. Conwill testified that Mr. Cowett had mentioned the possibility of a partial sale to him in June 1969 (Tr. pp. 315-16) and Mr. Cowett's own grand jury testimony contains a reference to a "tentative agreement" with

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the Italian National Oil Company which had to be called off when FOF's accountants advised FOF that serious adverse tax consequences would result for FOF if the contemplated sale were consummated at that time. If these negotiations were nonexistent, then presumably the defendants somehow were able to get Arthur Andersen to relieve them of the pressure they must have been under from Cowett to consummate the "tentative agreement." It seems much more likely that Mr. Cowett had a direct role in these negotiations and could have so testified.

(3) Continuous alleged misrepresentations as to the value of particular properties: The Government sought to convince the jury that while Mr. Cowett was knowledgeable in tax, legal and financial matters, he was not experienced in the oil and gas industry and trusted and relied exclusively upon the defendants and their staff for evaluations of the Natural Resources Fund Account. The Government argued, in essence, that the defendants knowingly deceived Mr. Cowett, relying upon the fact that he had no expertise in the oil and gas industry. As Mr. Conwill indicated, however, Mr. Cowett had been authorized by the FOF board to obtain outside evaluations and only Mr. Cowett could have told the jury the extent to which he received information about the Canadian Arctic and other oil and gas properties from persons other than KRC. Mr. Cowett certainly could have obtained access to other experts if he wanted to do so. We do know from Boucher's testimony that Mr. Cowett had indicated

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that FOF or IOS was pursuing potential investments in the Far East with persons other than KRC, had considered the acquisition of a Canadian oil and gas consulting firm and had contacts with other oil and gas and mineral companies who were offering deals to FOF and IOS. In addition, Mr. King indicated that he believed that Mr. Cowett had consulted a Mr. Tex Feldman of Texfel, Inc. from time to time about oil and gas matters. This is confirmed by documents in Mr. Cowett's file, which is in the Government's possession.

(4) Midwest Oil transaction: If Mr. Cowett had been available he could have explained the origins of FOF's interests in acquiring Midwest Oil, and the reasons why Mr. Cowett insisted that the offer to acquire Midwest Oil should be conditioned upon Standard Oil's acquisition of a portion of FOF's interest in the Canadian Arctic at the same price ultimately paid by Mecom and COG. Moreover, it could hardly have been expected that King would have been in a position to offer Mr. Swearingen of Standard Oil substantial business from IOS or FOF from which Standard Oil could recoup $40 million in profits unless King had received some indication from Mr. Cowett that FOF would cooperate with any such understanding. Mr. Cowett's denial of any such agreement or understanding with King would have been useful to the defense in challenging Mr. Swearingen's testimony and in supporting King's credibility.

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(5) The reasons why FOF wanted to sell a portion of its Canadian Arctic interests and why the amount that it desired to sell decreased during 1969 from 25% to "as little as possible" (Tr. p. 256): The Government suggested at the trial that the reason for Cowett's change of mind was that he was deceived by the defendants as to the value of the Arctic. The defendants believe that Mr. Cowett's testimony would have demonstrated that his confidence in FOF's Canadian Arctic investment (Tr. pp. 113-15; 299-301) was based upon his own analysis, and those of others, of the oil and gas potentials of that area, and was only in part based upon information he received from the defendants and other KRC personnel. Mr. Cowett could have testified about the other sources of information available to him and IOS, including others in the oil business and numerous oil and gas publications that discussed the Arctic in great detail.

(6) FOF's guidelines for revaluation: Mr. Cowett could have explained these guidelines for which he is said to have been principally responsible (Tr. pp. 2022-24). More specifically, Mr. Cowett's testimony would have been relevant on the question of whether there was a requirement that at least 10% of FOF's interest be sold before the FOF Board would have approved of a revaluation based upon a partial sale. Mr. Conwill indicated, for example, that a lesser percentage would have been acceptable to him under certain circumstances and that he had understood that the 10% "requirement"

represented an agreement between Cowett and Arthur Andersen to "split the difference" (Tr. p. 2317). Presumably this means that Cowett would have found a 5% sale to be sufficient. Moreover, as the one responsible for the guidelines and for explaining the Arctic sales to the FOP Board, Mr. Cowett's view as to what constituted a bona fide arm's length transaction would have been extremely revealing, especially since he believed, contrary to Arthur Andersen, that the Lakeshore purchase was arm's length because of Bennett King's knowledge of KRC's operations in the Canadian Arctic (Tr. pp. 206-08).

(7) Mr. Cowett's testimony would have been relevant on the following questions: (i) the extent of his knowledge of negotiations with potential purchasers and whether he authorized the defendants to offer substantial future business to any such purchaser, including Mecom, in return for their agreement to purchase FOP interest in the Arctic; and (ii) whether or not Mr. Cowett knew that an advance of $275,000 had been made by Royal Resources Corporation to John Mecom which had been used by Mecom to meet his downpayment under his Arctic contract and of discussions with Mecom about the possibility that King-related companies would be entering into other business dealing with Mecom. Mr. Cowett's knowledge of the $275,000 advance and of additional business relationships with Mr. Mecom would have tended to confirm the defendants' position that there were no secret deals calculated

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to make the Mecom transaction something other than arm's length.

(8) The COG transaction: Mr. Cowett might also have been in a position to give testimony relevant to the question of whether secret inducements were given to COG. As Mr. Booth indicated (Tr. p. 1949), there was no attempt made to conceal the fact that KRC and COG intended to jointly promote the Arctic, and this may well have been discussed with Mr. Cowett. In addition, as the person responsible for approving purchases of properties offered by KRC (Tr. pp. 302-06), Mr. Cowett must have been aware of FOF's purchase of 50% of KRC's interest in Bristol Bay. The Government argued at trial that KRC's purchase of an interest in Bristol Bay was not only an inducement for COG's purchase of an interest in the Arctic, but also that the defendants concealed from FOF the fact that KRC thereafter sold an interest in Bristol Bay to FOF. The defendants submit that Mr. Cowett's testimony would have refuted the latter argument and would have contradicted the Government's assertion that a commitment was made to the effect that COG would be provided with sufficient proceeds to meet its obligations under the Arctic contract through purchases by KRC or FOF.

(9) Failure to obtain Sproule report as of December 31, 1969: The Government argued at trial that the defendants had somehow prevented FOF from obtaining an independent valuation of the Canadia

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Arctic properties as of December 31, 969 because they allegedly knew that any such valuation would be at great variance with the purchase price paid by Mecom and COG. If true, this would represent not only circumstantial evidence as to the bona fide nature of the Arctic transactions, but also would adversely affect the defendants' credibility. The proof indicated, however, that Boucher had offered to go to Calgary and obtain such a report from Sproule if it was needed (Tr. a. p. 2054) and that the decision not to seek such a report was made by Mr. Cowett after extensive discussion with FOF's accountants (Tr. at pp. 2061-64, 2316-17). Mr. Cowett could have explained the reasons why he decided not to obtain the report, and the defendants submit that his testimony would have been consistent with their contention that they were perfectly willing to cooperate in obtaining such an independent review.

(10) FOF's and IOS's investments in KRC and The Colorado Corporation: Mr. Cowett could have explained the extent to which both IOS and FOF benefitted from the profitability of KRC's dealings with FOF.

(11) The alleged motive -- assuring future business from FOF: As King testified, far from assuring KRC of future FOF business, the Arctic revaluation had the opposite effect on KRC. As a result of the revaluation, FOF's natural resource properties interests represented a much more substantial percentage of FOF's total portfolio and virtually precluded FOF from making substantial additional purchases of new projects and properties until

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the market-linked portion of its investment portfolio significantly increased so as to reduce the percentage attributable to natural resources. Thus, the extent of further business from the IOS complex was primarily dependent upon the ability of IOS to market the securities of new mutual funds or other corporate entities which would be authorized to make natural resource property investments. The defendants submit that an explanation from Mr. Cowett of these circumstances, as well as the financial and operating difficulties facing IOS and FOF at that time, would have seriously undercut the Government's argument on motive and supported the defendants' credibility.

(h) Eric Scott: Mr. Scott was a director of FOF and a prominent Canadian investment banker with extensive experience with oil and gas companies. We understand that he died in early 1976, several months before the trial commenced. Before the FOF Board finally approved the plan to purchase natural resource properties from KRC, Mr. Scott was authorized to investigate KRC and its principals. In addition, Mr. Scott received in the regular course copies of all invoices sent from KRC to FOF and accompanying project descriptions and summaries, and Mr. Cowett testified before the grand jury that he, Cowett, withheld approval of any proposed purchases until Mr. Scott had an opportunity to review the projects and express an objection. We submit that if Mr. Scott had been available, his testimony would have reflected favorably upon the KRC organ-

ization, and would have refuted the prosecutor's argument that KRC began to defraud FOF from the very inception of their relationship (Tr. at p. 4268). Mr. Scott might also have testified as to the market value of the Arctic properties in late 1969. Surely, if he had felt that the price paid by Mecom and COG was unreasonably high, he would have balked at using such price as a basis for any revaluation.

(i) Walter Montague: The prosecutor argued that Mecom decided to reject the Arctic contract when he failed in his efforts to secure the first drilling contract for the Arctic, which was awarded by KRC in April 1970. Indeed, the prosecutor suggested that the defendants never intended to honor their agreements with Mecom, thereby defrauding him as well as FOF. Mr. Montague, who died sometime before trial, worked for Mecom during 1970, and could have testifed, consistently with Boucher's testimony, that while KRC offered Mecom an opportunity to bid, Montague was forced to advise Boucher in February 1970 that Mecom's equipment could not be made suitable for use in the Arctic within the required time schedule. This testimony noy only would have buttressed the defendants' credibility, but also would have challenged Mecom's veracity or recollection as to the nature of his contract with KRC.

(j) Recollections of witnesses: The Government's case rested heavily on the recollection of witnesses with respect to facts that are now six to eight years old. Most of the Government witnesses admitted or demonstrated through their inconsistencies with prior testimony the

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fact that their recollections of these events were anything but fresh and the defendants also conceded their inability to recall important details. The following examples taken from the testimony of a few key witnesses demonstrate this obvious result of the Government's delay:

(1) Bob Hulsey did not recall: when Boucher indicated to him that Mecom had agreed to sign the Arctic contract (Tr. 834-35); whether Marriott agreed to the procedure of Hulsey's holding the contract until Marriott was satisfied (Tr. 839); whether he discussed the payment of $275,000 with King in January 1970 (Tr. 845); whether he discussed George Hardin's involvement with the $275,000 payment with King following his initial phone conversation with him in the fall of 1970 (Tr. 852); whether he told Mecom about the personal guarantee and drilling commitments he had allegedly discussed with King (Tr. 868); what statements had been made regarding the downpayment and total work obligations (Tr. 872-874); the circumstances of the alleged disappearance from his desk of the Arctic contract (Tr. 874); his recollection of Boucher's trip to Europe at a time when he would have been expected to have reported to Boucher about the alleged qualifications placed by Mecom and Marriott upon the Arctic contract (Tr. 880-81); whether Boucher had told him that Lowry would handle the side agreement before or after he was called by Marriott on or about January 2, 1970 (Tr. 883-84); and whether he

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spoke to Boucher or King involving the $275,000 payment (Tr. 904). Hulsey summarized his problem as a witness by stating that it was difficult to remember the specifics of conversations many years after the events (Tr. 879-80).

(2) Timothy Lowry did not recall: when he first spoke to Hulsey regarding the Arctic contract (Tr. 1399); whether the buy-back agreement about which he testified was prepared at the time he first spoke with Hulsey and whether he or Hulsey prepared it (Tr. 1401-02); the time of his conversation with King regarding the alleged buy-back agreement (Tr. 1402); whether Government Exhibit 1 was a copy of the document he drafted (Tr. 03-04); whether the provisions reflected in paragraph 2 of Government Exhibit 1 were drafted at the request of King or Hulsey (Tr. 1406); what the explanation was for his conflicting testimony before the IRS in 1972 (Tr. 1416-19, 1456-58); and whether the alleged buy-back agreement included in Government Exhibit 1 was a draft (Tr. 1469). Lowry stated that his memory was vague on whether or not the original of the buy-back agreement was signed (Tr. 1439); and summed up his recollection by stating that it was possible that he knew facts in 1972 which he has now forgotten (Tr. 1420-21).

(3) John Mecom could not distinguish between conversations with Hulsey, Boucher and King (Tr. 923); misplaced the date when he himself filed in bankruptcy by an entire year (Tr. 924-26); and recalled his first

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conversation about the proposed Arctic contract with John King as having taken place one month after its execution (Tr. 937). Mecom stated that he could not remember things occurring five years ago without some "backup of facts" (Tr. 948).

(4) Neal Marriott did not recall: the extent to which he discussed the alleged buy-back agreement with Boucher in the spring of 1971 (Tr. 1052-53); whether he called Lowry after he received the draft buy-back agreement from him (Tr. 1074); whether he conducted negotiations with Hulsey in the spring of 1970 regarding a proposed partnership between King and Mecom (Tr. 1078); whether he spoke to Arthur Andersen representatives about the alleged omissions from the Arctic agreement (Tr. 1096); and the substance of his telephone conversation with Lowry on or about January 2, 1970 (Tr. 1112). Marriott explained his numerous contradictions of prior testimony and of the testimony of others by stating that it is difficult to recall things that happened six years ago except by refreshing one's memory by going through files (Tr. 1112-13).

(5) Similarly, the defendants had understandable gaps in their memories with respect to the events in question. They were obliged to attempt to refresh their recollections at a time years after the events when relevant documents were unavailable to them and witnesses who had already been spoken to by the Government had refused to talk to them or to their

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attorneys (e.g., Mecom, Trueblood, Bennett King, Frederickson, Davis, Dippo).

(k) February 10 Memorandum: The defendant put into evidence as past recollection recorded through the defendan King, a memorandum from King to Lowry which summarized a February 10, 1970 telephone conversation between King and Mecom and which indicated that Mecom had initiated his request for a repurchase agreement at that time, rather than earlier as part of the original Arctic agreement. A copy of this memorandum was found, almost by chance, in King's personal files which had been moved approximately six times in the course of various changes of offices following the disasterous events affecting KRC in 1971. The secretaries and office personnel in charge of the maintenance of these records had changed a number of times. By 1975-1976 it was no longer possible to located the ribbon copy of this memorandum. Furthermore, after the lapse of several years, Larry Ocrant was not able to recall whether or not he was present when Mecom called on that date, as King believes that he was. At an earlier time, Mr. Ocrant may well have been able to remember that occasion. In any event, we submit that the probative force of the February 10 memorandum would have been considerably greater if it could have been located in 1971 when the events were less removed, memories were fresher and the Government's challenge to the memorandum's authenticity could have been met conclusively.

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(1) Unavailability of Documents: Since the defendants had no reason to know, until late 1973 or 1974, that these events were being investigated, they were unable to take steps to preserve relevant testimony. By that time, it was extremely difficult, if not impossible, for the defendants to obtain the documentary evidence necessary to their defense. The Government public investigation of this case began, almost to the month, at the time when Boucher ceased to be president of KRC. Until that time, Boucher had been working with the trustee in bankruptcy and presumably had access to KRC's documents. By the time the indictment was returned, however, all the documents were in the possession of the KRC trustee and the defendants had no practical access to the thousands of documents necessary to review in order effectively to prepare their case.

The task of reviewing documents was made more difficult by the fact that over the years the files had been reorganized and culled through so many times that it was literally impossible to find particular documents that might be of help. Moreover, during the period when the defendants were preparing for trial, the KRC trustee took the position that he would only make available to the defendants documents which they had specifically requested.

Since the defendants had been out of the company for years, and since they had not been familiar on a day-to-day basis with the documentation, the only way effectively to search for documents would have been to

undertake a general search through, and this ability was denied to them, although not to the Government. Mr. VonStein had access to the documents for more than a year.

CONCLUSION

For the reasons set forth in this affidavit, and the accompanying memorandum of law and in the memoranda and affidavits previously filed, the defendants respectfully request that the verdict ve set aside and the indictment dismissed or, in the alternative, that the Court order a hearing to determine whether the Government can justify its delay in this case and, in preparation for that hearing, order the Government to turn over to the defendants all correspondence, internal memoranda and other documents relating to this investigation.

Michael F. Armstrong
MICHAEL F. ARMSTRONG

Sworn to before me this
22nd day of July, 1976.

Notary Public

NOREEN MARIE McDONAGH
Notary Public State of New York
No. 24-4523015
Qualified in Kings County
Commission Expires March 30, 1978

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	BOUCHER NOTICE OF MOTION FOR DISMISSAL OF THE INDICTMENT AND FOR A CHANGE OF VENUE
Defendants.	:	

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavits of A. Rowland Boucher, sworn to on the 17th and 19th days of March, 1975, respectively, the affidavit of Peter Fleming Jr., Esq., sworn to on the 20th day of March, 1975, the Indictment, and upon all papers and proceedings, the undersigned will move this Court at a Motion Part to be held before the Honorable Marvin E. Frankel, United States District Judge, in the United States Courthouse, Foley Square, New York, New York at a time and place to be fixed by the Court:

1. For an order pursuant to Rules 12 and 48 of the Federal Rules of Criminal Procedure, and the Fifth and Sixth Amendments to the Constitution, dismissing the indictment as to Mr. Boucher on the grounds (a) that the United States abused its authority in presenting the evidence in this case first to a grand jury in the District of Colorado and, failing to obtain an indictment there, thereafter presenting the evidence in this case to a grand jury in this District,

Exhibit A

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and (b) that the delay in bringing this indictment has materially prejudiced Boucher's rights to adequately defend against it and has deprived him of a central and material witness, Edward Cowett.

2. In connection with the motion for an order of dismissal, an order directing that the United States produce for inspection (a) any and all grand jury testimony, SEC testimony, and statements of one Edward Cowett on the grounds that Cowett died in 1974, that there is reason to believe Cowett's testimony was and would have been exculpatory that the delay in bringing this indictment therefore has deprived Boucher of a material witness through no fault on his part, and, additionally, that Cowett's grand jury testimony, if any, given in the District of Colorado will establish that the evidence of the transactions underlying this indictment was presented to a federal grand jury in Colorado before it was presented to a grand jury in this District, (b) any other grand jury testimony given before a federal grand jury in the District of Colorado on the ground that a review of that testimony will establish that evidence of the transactions underlying this indictment was presented to a federal grand jury in the District of Colorado before it was presented to a federal grand jury in this District, and (c) any and all internal government memoranda dealing with the choice of this District as the District of indictment and prosecution, including but not limited to internal memoranda of the Securities and Exchange Commission and of the offices of the United States Attorney for this District and the District of Colorado.

3. For an order pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure transferring this case

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to the District of Colorado for trial in the interests of justice and for the convenience of the defendant and his witnesses.

4. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 19, 1975

Very truly yours,

CURTIS, MALLET-PREVOST, COLT & MOSLE

By _____
A Member of the Firm
Attorneys for A. Rowland Boucher
100 Wall Street
New York, New York 10005

TO: HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10005

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA : 75 Cr. 70 (MEF)

-v- : AFFIDAVIT

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

PETER FLEMING JR., being duly sworn, says:

1. I am a member of the firm of Curtis, Mallet-Prevost, Colt & Mosle, attorneys for the defendant A. Rowland Boucher for the purpose of the preparation and filing of motions in connection with this indictment and all proceedings relevant to a determination of those motions. I make this affidavit specifically in support of Boucher's motions to dismiss the indictment, pursuant to Rules 12 and 48 of the Federal Rules of Criminal Procedure, and, alternatively, for a transfer of this indictment to the District of Colorado for trial, pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure.

A. The Indictment

2. While in four counts, the indictment in essence concerns itself with a single series of related transactions. As we understand it, the indictment alleges that in 1969 King Resources Company ("KRD") sold certain arctic oil and gas leases to Fund of Funds ("FOF"), a mutual fund owned by Investors Overseas Services ("IOS").

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A year later, in 1970, FOF apparently revalued these oil and gas leases upward from $10 million to $100 million. This revaluation apparently was based upon the sale of a portion of the same or contiguous acreage to -- "among others" -- John Mecom and Consolidated Oil and Gas, Inc. ("COG").

3. The indictment appears to charge that these sales to Mecom and COG were not proper evidence of the value of the oil and gas leases in question since, according to the indictment, the defendant King had entered into various agreements with the purchasers, Mecom and COG, the effect of which would be to guarantee Mecom and COG against loss on their purchases.

4. The fraud which appears to be alleged on the part of King and Boucher is their purported representation to FOF's auditors, Arthur Andersen & Co., that no agreements of any sort purporting to guarantee Mecom and COG against loss existed in fact, that the sales to Mecom and COG were bona fide, and that the price paid by Mecom and COG therefore did represent the real value of the similar oil and gas leases previously sold to FOF and revalued by FOF to $100 million for balance sheet purposes in 1970.

B. Dismissal of the Indictment

(a) Delay

5. Boucher was first questioned about the transactions underlying this indictment in the Spring of 1970 (Boucher Affidavit, 3-19-75, pp. 1-2). He was questioned under oath by the Securities and Exchange Commissio

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in Denver in 1971 and 1972. No later than July 1973, undoubtedly based upon prior investigation, the SEC issued a formal order of investigation which specifically focused upon the transactions underlying this indictment (Exhibit A, Boucher Affidavit 3-19-75). A federal grand jury investigation which we believe involved these transactions commenced in the District of Colorado no later than January 7, 1974, the return date of Boucher's own subpoena to appear before that grand jury (Ex. B, Boucher Affidavit 3-19-75).

6. This Indictment was filed on January 19, 1975, just two days short of five years after the last Overt Act pleaded in the indictment, and therefore just one day prior to the expiration of the applicable five-year statute of limitations.

7. We believe that the delay between 1970, when Boucher was first questioned about these specific transactions, and the filing of the indictment on the day before the statute of limitations would expire, in itself raises substantial questions as to whether the indictment should be dismissed. Any question however would seem answered in Boucher's favor by reason of the death of Edward Cowett at some time in 1974:-on information and belief, in August of that year. There is no question, based upon the indictment itself, that Cowett was an important and material witness to the transactions in question. His knowledge was not peripheral. The indictment specifically alleges that Cowett, who is identified as a Director of both IOS and FOF, requested that KRC provide

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evidence as to the value of the arctic properties involved in this case (Ind. par. 16), and thereby generated the very transactions which the government alleges were fraudulent and which form the specific basis of the charges in this indictment. The loss of Cowett as a witness, through no fault of Boucher, clearly has material impact upon the determination of Boucher's guilt or innocence. Yet Cowett died more than four years after the SEC first spoke to Boucher about the very transactions in issue.

8. This is not a case therefore where delay in prosecution has had no effect other than the usual resulting loss of recollection, etc. This is a case where a central witness died more than four years after the investigation of the underlying transactions began. The loss of Cowett as a witness is directly attributable to the unexplained delay on the part of the United States in bringing these transactions to criminal indictment.

9. We believe these facts require dismissal without more. At the very least, we submit most respectfully that a hearing should be ordered to assist in the determination of Boucher's motion to dismiss on this ground, and that all of Cowett's statements and testimony, either to the SEC, any Assistant United States Attorney, or any federal grand jury, should be produced so that the value of Cowett's lost testimony may be measured. If in fact Cowett's prior testimony or statements are exculpatory of Boucher, then the government's delay in filing this indictment has cost Boucher a substantial and material witness in his own defense. Dismissal necessarily should follow in such circumstances.

(b) Prior Grand Jury Proceeding

10. For the reasons set forth in the second Boucher Affidavit sworn to on March 19, 1975, we believe the following is clear:

(a) That a federal grand jury in Denver did take testimony relating to KRC, Boucher, and FOF. For example, Mr. Merritt, a New York lawyer whose firm represented FOF, was seen by Mr. Boucher in the witness room outside of the Denver grand jury room on the same day that Mr. Boucher appeared pursuant to his January 7, 1974 subpoena. Mr. Bennett King, a principal in Lakeshore Associates, also appeared as a witness before that Denver federal grand jury. Lakeshore Associates was one of the "other" purchasers referred to in the indictment together with Mecom and COG. The only fair inference is that Mr. Merritt and Mr. Bennett were questioned before a federal grand jury in Denver about the very transactions which underlie the indictment subsequently filed in this District.

(b) The federal grand jury in Denver took testimony in 1974. No indictment was returned. The indictment in this District was filed on January 19, 1975. The only fair inference is that evidence was presented to a federal grand jury in this District only after the federal grand jury in Denver had taken no action with regard to the same transactions.

11. For the reasons and upon the authority set forth in our accompanying memorandum of law, we believe that presentation of the evidence in this case in this District, after the Denver grand jury failed to take action, constitutes forum-shopping of a degree so egregious as to violate constitutional principles and require the dismissal of this indictment. Certainly, at the very least, it supports and reenforces Boucher's other motion for a transfer of this case to the District of Colorado for trial.

12. We respectfully submit that our factual showing has been sufficient to require a hearing as to the facts and circumstances surrounding the bringing of this case in this District after a federal grand jury in Denver failed to take action. In this connection, we believe that we are entitled to discover -- on this issue only -- the precise nature of the grand jury investigation in Denver, together with any and all internal government memoranda dealing with the decision to present the case in this District shortly before the expiration of the applicable period of limitations, and shortly after Mr. Cowett, a central witness, had died.

C. Motion for Change of Venue

13. Both defendants were and are residents of Denver, Colorado. At all relevant times, King Resources Company and COG resided and operated out of Denver, Colorado. John Mecom, on information and belief, resides in Houston, Texas. FOF was a wholly subsidiary of IOS.

Both FOF and IOS resided and operated out of Geneva, Switzerland. On information and belief, Andersen's audit of FOF for its 1970 opinion took place principally in Geneva, Switzerland. Specifically, and again on information and belief, Andersen's audit of the revaluation of FOF's arctic holdings, i.e., the transaction in question, took place principally in Geneva, Switzerland and Denver, Colorado.

14. On information and belief, FOF was prohibited by law from selling any of its shares within the United States or to residents of the United States. Assuming that this prohibition was not violated, all of FOF's shareholders therefore resided outside of the continental United States at the time of the transactions in question. There were therefore no domestic victims.

15. None of the other many corporations or entities mentioned in the indictment resided in this District.

16. Edward Cowett, the other individual whose name is mentioned in the indictment, worked for and was a director of IOS and FOF in Geneva, Switzerland and, on information and belief, resided in Geneva, Switzerland at the time of the transactions in question.

17. Insofar as the indictment states -- and insofar as we know -- the only contact of this indictment with this District is the alleged sending of two letters, and other unspecified information to Andersen's New York office in December 1969 and January 1970. We can think of no case which to our knowledge had less factual contact with the Southern District of New York.

18. For the reasons and upon the authority set forth in our accompanying memorandum of la., we believe that a transfer of this case for trial in the District of Colorado is proper and appropriate, and indeed may be constitutionally required, given the almost invisible factual contact of this indictment to this District and the enormous financial and personal hardship which trial in this District would work upon Mr. Boucher.

19. Moreover, if we are correct that evidence of the transactions underlying this indictment previously was presented to a federal grand jury in Denver, and if subsequent indictment in this District is, as we believe, a tactic designed to secure a prosecutive advantage, then we submit most respectfully that questions of due process surely are involved and require at least the transfer of this case to the District of Colorado for trial.

WHEREFORE, this Court respectfully is urged to grand the relief requested in the accompanying Notice of Motion, together with such other and further relief as to this Court may seem just.

Dated: New York, New York
March 20, 1975

PETER FLEMING JR.

Sworn to before me this
19th day of March, 1975.

Notary Public

STEPHEN N. GOUT
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4513609
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA : 75 Cr. 70 (MEF)

-v- : AFFIDAVIT

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

A. ROWLAND BOUCHER, being duly sworn, says:

1. This affidavit is furnished in support of my motion for a change of venue of the trial of this case from the Southern District of New York to the District of Colorado.

2. If a change of venue is not granted, my attendance will be required in New York City daily during the trial, which is expected to last approximately one month. I am also informed that adequate preparation of my defense by New York counsel will require my periodic but substantial presence in New York prior to the commencement of the trial itself.

3. Trial in New York will require that I pay for the transportation to and from New York of witnesses who reside in and about Denver, Colorado and other places distant from this District, including character witnesses. I presently am unable to estimate the number of witnesses whom I might wish to call in my defense, since I have not yet

received a bill of particulars of the charges against me, and since I therefore cannot know what evidence, testimonial or otherwise, will be required to answer those charges successfully.

4. I have resided in Englewood, Colorado, a suburb of Denver, since 1960 and presently reside at [illegible] Blackmer Road, Englewood, Colorado. I am married. I have four children, ages 13, 10, 8 year old twin girls.

5. Prior to August 31, 1973 I had served for 13 years as a geologist and ultimately President and Chief Executive Officer of King Resources Company in Denver. Since September 1, 1973, I have been employed in Denver as a consultant with regard to various oil and gas properties owned and operated by a Delaware corporation. While my responsibility in this area has included trips to West Virginia, Mississippi, Oklahoma, Texas, and Montana, I have continually been domiciled in and operated out of Denver. My yearly income before taxes since that date has been approximately $30,000.

6. My financial situation is such that it has been difficult for me to retain counsel in New York for the purpose of motions and trial. I have been unable to borrow money for that purpose, and have been able to retain counsel only because of an agreed upon indemnification for counsel fees provided pursuant to my contract with and the by-laws of King Resources Company. That indemnification is available only for counsel fees and is not available for personal maintenance if I am to be tried in New York, or for the transportation and personal maintenance of necessary witnesses.

7. I am the sole source of support for my family. I am indebted personally on an amount approximating $237,000. I have no assets from which I can generate cash flow. It is therefore extremely critical for me that I minimize the amount of time that I am away from Denver and my consulting business. Regardless of its length, trial in Denver would permit me virtually on a daily basis to maintain substantial contact with my business. The same applies with even greater force for the period of time which will pass prior to the commencement of this trial.

8. Additionally, the cost of retaining Denver counsel would be very much less than the cost of retaining counsel here in New York.

9. I hesitate to make one final appeal. I am both a husband and a father. An enforced absence from my home for the substantial period of time which preparation for and trial in New York would encompass necessarily would place upon my wife the difficult burden of being both mother and father to four adolescent children who need and have received a father's presence in their home. I am unable financially to permit my wife to be here with me in New York, even if that were possible given the academic situation of my children.

10. I maintain my innocence of any wrong doing. However, trial of my guilt or innocence could as well be accomplished in Colorado without subjecting me to the additional and in fact overwhelming burden of a lengthy trial

in New York City.

WHEREFORE, this Court respectfully is urged to grant my motion for a change of venue to Denver, Colorado in the interests of justice, and for my convenience and the convenience of my witnesses, together with such other and further relief as to this Court may seem just.

Dated: New York, New York
March/7, 1975

A. ROWLAND BOUCHER

Sworn to before me this
17th day of March, 1975.

Notary Public

CAREN S. BRUTTEN
Notary Public, State of New York
No. 24-4500727
Qualified in Kings County
Commission Expires March 30, 197_

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA : 75 Cr. 70 (MEF)

-v- : AFFIDAVIT

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

A. ROWLAND BOUCHER, being duly sworn, says:

1. I submit this affidavit in support of my motion to dismiss this indictment on the grounds that (a) the United States abused its authority in presenting the facts of this case first to a federal grand jury in Denver, Colorado and, failing to obtain an indictment there, representing the facts in this case to a grand jury in this District, and (b) that the delay in bringing this indictment has materially prejudiced my rights to adequately defend against it.

2. Sometime in 1970, and to my best recollection in the Spring of that year, trading in the stock of Consolidated Oil and Gas, Inc. was suspended. At about that time, I received a telephone call in my office at King Resources in Denver from Stanley Sporkin of the Securities and Exchange Commission. Present with me were William Coffey and William Fishman, the executive vice-president

and one of the inside lawyers of King Resources, respectively. Mr. Sporkin's questions had to do with the nature of the transactions underlying this indictment, to wit, the sale by King Resources of certain Arctic oil and gas permits to Consolidated Oil and Gas, Inc. To my best recollection, Mr. Sporkin requested a full description of those transactions, information as to how King Resources handled the transactions on its books, and the relationship of those transactions to Fund of Funds. This was the first occasion upon which I was questioned in this connection by a government agency.

3. My best recollection is that I was first questioned under oath by representatives of the Securities and Exchange Commission in 1971 and again in 1972, on both occasions in Denver. I presently have no specific recollection of the areas of inquiry, but I can state that the questioning was extensive and expansive. The transcripts of my testimony presently are in Denver. I intend to review them immediately upon my return to Denver and will forward their substance and the transcripts themselves to my counsel.

4. On July 24, 1973, the SEC issued an order of private investigation "In the Matter of Fund of Funds Ltd./ King Resources Company." A copy of that order is attached hereto as Exhibit A. It was provided upon request to the Commission by my Denver counsel. The order specifically related to the transactions which underlie the instant indictment (Order, Par. II).

5. Near the end of December 1973 or in early January 1974, I received a subpoena, returnable January 7,

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1974, to appear as a witness before a federal grand jury impaneled at the United States Courthouse, Denver, Colorado. A copy of that subpoena is attached hereto as Exhibit B. Representatives of the Office of the United States Attorney in Denver refused to discuss the matter under investigation with my Denver counsel. I appeared before the grand jury on or about January 7, 1974 and refused to answer any questions.

6. In April 1974, I received a letter from the SEC in Washington calling for the production of various documents. A copy of that letter, with attachment, is annexed hereto as Exhibit C. The document request bears specifically upon the transactions which underlie the instant indictment. I responded to this letter by my letter mailed April 22, 1974, a copy of which is attached as Exhibit D.

7. I have no personal knowledge as to precisely what activities or transactions were the subject of the grand jury investigation in Denver in 1974, during which I was subpoenaed and refused to answer questions as set forth above. I can state that I heard on several occasions that the Denver grand jury was investigating the Arctic transactions which form the basis of the instant indictment in this District, but this information is hearsay.

8. I do know that the following individuals were subpoenaed to testify before the Denver grand jury. My knowledge is based either upon statements by those individuals, or by my seeing those individuals outside the grand jury room on the day I appeared before that grand jury and refused to answer questions. Each of these

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individuals were related to King Resources Company and at least two of them to Fund of Funds. They are:

(a) Harry Cooper: - formerly President of King Resources Company;

(b) William C. Coffey: - former and present Executive Vice-President of King Resources Company;

(c) Roger L. Davis: - Vice-President and Chief Acting Officer of King Resources Company;

(d) Don McNamara: - Vice-President of King Resources Company;

(e) Bennett King: - Vice-President of King Resources and one of the principals of Lakeshore Associates. Lakeshore Associates was one of the "certain purchasers" of the arctic oil and gas permits referred to in paragraph 20 of this indictment which specifies John Mecom and Consolidated Oil and Gas, Inc. in that regard, but does not specify Lakeshore Associates.

(f) Raymond Merritt: - a partner in the New York firm of Willkie, Farr & Gallagher. Willkie, Farr & Gallagher were the attorneys for Fund of Funds. I met Mr. Merritt in the witness room immediately outside of the Denver grand jury room on the day I appeared before that grand jury pursuant to the subpoena described above.

(g) Edward Cowett: - as the indictment alleges, Cowett was a director of Investors Overseas Services and Fund of Funds (Ind., par. 14), and is mentioned also in par. 16. I have been told

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by reliable sources that Cowett appeared in the Denver grand jury in August 1974. Immediately after that appearance, he flew from Denver to Florida, suffered a heart attack, and died on the airplane.

(h) Timothy Lowry: - principal outside counsel for and a director of King Resources Company.

9. In summary, to my personal knowledge, the business of King Resources Company, including its relationship with Investors Overseas Services, which owned Fund of Funds, has been under investigation by the SEC since at least 1970, when Mr. Sporkin phoned me, or 1971 when my testimony was first taken by the Commission. The specific arctic transactions which form the basis for the indictment in this District were the subject of Mr. Sporkin's call in 1970 and the specified subject of a Commission investigation at least as early as July 1973. A federal grand jury was impaneled in Denver, Colorado at least as early as January 7, 1974, when I was subpoenaed to appear as a witness before such a body, and did subpoena other persons familiar with the relationship between King Resources Company, Fund of Funds, and Investors Overseas Services. Finally, at least two individuals closely associated with Fund of Funds, Messrs. Merritt and Cowett, were subpoenaed before that Denver federal grand jury, and at least one of those individuals, Mr. Cowett, gave testimony before that grand jury.

10. I have been advised by my counsel that the information which I set forth herein under oath may be considered material on the question of whether the transactions set forth in the indictment were the subject of a pri

federal grand jury investigation in Denver, Colorado. I also am informed by counsel that the information set forth in this affidavit may be material on the question of whether the delay by the United States in filing the indictment in this case has been so substantial and prejudicial as to warrant its dismissal on that ground alone, especially in view of the death in 1974 of Mr. Cowett, an individual closely affiliated with Fund of Funds and specifically so described in the indictment itself.

Dated: New York, New York
March 19, 1975

A ROWLAND BOUCHER

Sworn to before me this
19th day of March, 1975

Notary Public

SARAH W. SHARON
Notary Public, State of New York
No. 41-3242100
Qualified in Queens County
Commission Expires March 30, 1976

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THIS ORDER IS AN ORDER DIRECTING A PRIVATE OR NON-PUBLIC INVESTIGATION AND IS BEING FURNISHED TO YOU AT YOUR REQUEST FOR YOUR OWN USE.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 24, 1973

In the Matter of

FUND OF FUNDS LTD.
KING RESOURCES COMPANY

File No. HO-669

ORDER DIRECTING A PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. The securities of King Resources Company ("KRC") are registered with the Commission under Section 12 of the Exchange Act and are traded on the over-the-counter market.

B. John M. King ("King") owns approximately 16% of the outstanding stock of KRC and until August 13, 1970 was Chairman of its Board of Directors.

C. Fund of Funds ("FOF") is an open end mutual fund incorporated in Canada with shareholders throughout the world. Its management company, FOF Management Co., Ltd., is a subsidiary of the IOS Ltd. ("IOS"). Both are defendants in S.E.C. v. Robert L. Vesco et al., 72 Civ. 5001, U.S.D.C., SDNY, filed November 1, 1972.

II

Members of the staff have reported to the Commission information which tends to show that:

A. From on or about January 1, 1968 KRC sold to FOF and its subsidiaries securities, including undivided interests in oil and gas properties.

B. KRC, IOS, FOF, their officers, directors, and others participated in the sale, valuation, and reporting of such securities. Such securities were incorporated in the public valuation and reports of FOF. In 1970, certain assets of FOF including those purchased from KRC, were placed in a newly formed English non-resident corporation named Global Natual Resources Properties Ltd. ("Global").

C. While engaged in the offer, purchase, and sale of such securities and of shares; KRC, IOS, FOF, their officers, directors, employees, John M. King, Resident

BEST COPY AVAILABLE

Edward M. Cosett and others made untrue statements of material facts and have omitted to and are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things; (1) the value of shares of FOF, and (2) the value, productivity, and merit of the securities sold by KRC.

D. From on about January 1, 1968 KRC, IOS, their officers, directors, employees John M. King, Rowland Boucher Edward M. Cosett and others employed devices, schemes and artifices to defraud and engaged in transactions, acts, practices, and courses of business which may have operated as a fraud and a deceit upon the public and FOF in connection with solicitations to purchase, purchases, and sales of the securities mentioned in paragraph II above and shares of FOF in that, among other things, (1) the above named persons obtained money from FOF and FOF shareholders through misrepresentations and omissions to state material facts and concealment of material facts concerning the nature, quality, and value of the securities sold to FOF and its subsidiaries including undivided interests in oil and gas properties, (2) the above named persons participated in acts which misrepresented such securities, and (3) as part of the scheme, FOF established Global, placed in Global such securities, and distributed Global's shares to shareholders of FOF.

E. While engaged in the offer, sale and delivery of said securities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

III

The Commission having considered the foregoing, deems it appropriate and necessary and for the protection of investors that a private investigation be made;

1. to ascertain the facts concerning the matters set forth in paragraph II above, and

2. to determine whether there have been possible violations of Section 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IT IS ORDERED, pursuant to the provisions of Section 21(a) of the Securities Exchange Act of 1934, that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, that for the purpose of such investigation, Donald J. Stocking, Joseph F. Krys, John J. Kelly, Jr., Robert Laprade, Thomson von Stein, James E. Sims, and Jerold Lanzotti and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Ronald F. Hunt
Secretary

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Subpoena to Testify

Cr. Form No. 29 (Rev. 1-

United States District Court

FOR THE

DISTRICT OF COLORADO

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
IN THE MATTER OF THE GRAND JURY
~~XXXXX~~ } ~~XXXX~~

To A. Rowland Boucher, 25 South Lane, Englewood, Colorado

You are hereby commanded to appear in the United States District Court for the District of Colorado at 145 U. S. Court House, 19th and Stout Streets, in the city of Denver on the 7th day of January 1974 at 1:30 ~~XXXX~~ o'clock P. M. to testify in the ~~above-entitled case~~ ~~XXXXXXXXXXXXXXXXX~~ matter of the Grand Jury.

This subpoena is issued on application of the United States. UPON RECEIPT OF THIS SUBPOENA, PLEASE CALL MR. WIGGINS OR MR. SPURGEON AT 837-4184.

CHARLES R. MANSPEAKER

January 2, 19 74.

Clerk.

By _____ Deputy Clerk.

W. ALLEN SPURGEON
Attorney for United States
323 U. S. Court House
Address
Denver, Colorado 837-4184

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to _____ and tendering to _____ the fee for one day's attendance and the mileage
allowed by law.

_____

Service Fees By _____

Travel ..... $
Services .....
Total ..... $

[1] Insert "United States," or "defendant" as the case may be.
[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such fees (Rule 17(b), Federal Rules Criminal Procedure).

[illegible] 8-7 72 2400 PADS 8104

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rowland Boucher
25 South Lane
Englewood, Colorado

Re: Fund of Funds Ltd., King
Resources Company HO-669

Dear Mr. Boucher:

Pursuant to a formal order of investigation issued by this Commission, the staff is conducting an inquiry concerning the above named entities. We believe that it is necessary to obtain information which you have concerning this matter. Accordingly, attached is a subpoena which requires you to appear with certain records at the time and place indicated on the subpoena. However, if the documents are furnished by the return date of the subpoena, your personal appearance will be postponed til a later date.

Please furnish a list of all documents called for by the subpoena. Please place a mark on all documents submitted by you identifying such documents as being provided by you.

If any documents called for are not furnished, please indicate the reason therefor, and their location.

If any documents called for are withheld because of a claim of attorney-client privilege, please, on the schedule of all documents identify; (1) the attorney and client involved, (2) all persons or entities shown on the document to have received or sent the document, (3) all persons or entities known by you to have been furnished the document or informed of its substance by either the sender or the receiver.

This inquiry is confidential, and it should not be construed as an indication by the Commission or its staff that any violations of law have occurred, or as a reflection upon the securities or persons involved.

If you have any questions concerning your rights and duties please consult counsel. If you have any questions concerning the subpoena please call me at (202) 755-1764 or Robert Laprade at (202) 755-4874.

Sincerely yours,

Thomson von Stein
Attorney

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SE-GC-8

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

To Rowland Boucher

25 South Lane, Englewood, Colorado

At the instance of The Securities and Exchange Commission

you are hereby required to appear before An Officer

of the Securities and Exchange Commission, at 500 North Capital Street, Room 496

in the City of Washington, D.C.

on the 29th *day of* April, *19*74, *at* 10:00 *o'clock* a.m. *of that day, to testify in the Matter of* Fund of Funds Ltd./King Resources Company *involving* pursuant to a formal order of investigation issued pursuant to Section 21(a) of the Securities Exchange Act of 1934.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

See Attachment

Fail not at your peril.

In testimony whereof, the seal of the Securities and Exchange Commission is affixed hereto, and the undersigned, a member of said Securities and Exchange Commission, or an officer designated by it, has hereunto set his hand at Washington, D.C. *this* 8th *day of* April, *19*74.

Thomson von Stein

Thomson von Stein, An Officer

16-3498

NOTICE TO WITNESS.—If claim is made for witness fee or mileage, this subpoena should accompany voucher. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

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ATTACHMENT 1581023

For the period January 1, 1968 through December 31, 1972, all documents, including but not limited to depositions, court papers, contracts, memos, diaries, reports and notes or memos of phone calls, speeches, press conferences or meetings, relating to:

1. Any lawsuit in which IOS Ltd, Fund of Funds Ltd, (or any subsidiary) was a party relating to the revaluation by Fund of Funds Ltd (or a subsidiary) of interests in Canadian Arctic oil and gas permits in December 1969-January 1970.

2. All purchases and sales of shares of Fund of Funds Ltd. (limited to the period September 1, 1969 to June 30, 1970.

3. The creation and spin-off [illegible]dending of Global Natural Resources Properties Ltd.

4. Any business or financial de lings, between (1) officers or directors (or any trusts for members of their family) of IOS Ltd, Fund of Funds Ltd and (2) any officer or director of King Resources Co., Colorado Corp, (or any subsidiary) or John M. King (or any trust or members of his family).

5. The sale of a portion of Fund of Funds Ltd. interest in Canadian Arctic oil and gas permits to King Resources Company in December 1969 or January 1970.

6. The sale of a portion of King Resources Company's interest in Canadian Arctic oil and gas permits to John Mecom (or companies controlled by him), Consolidated Oil and Gas Co., Lakeshore Associates, John M. King.

7. All telephone conversations or meetings between King Resources Companies officers or directors and Fund of Funds Ltd's officers and directors.

8. Any arrangement of credit or assistance for payment of an obligation by (1) John King, (2) King Resources Company, (3) any subsidiary, officer, director or agent of King Resources or John M. King, (4) IOS Ltd. or Fund of Funds Ltd. or any officer, director or agent for (1) Harry Trueblood, (2) Consolidated Oil and Gas, (3) any subsidiary of Consolidated Oil and Gas (4) any partnership in which John Mecom was a partner, (5) any corporation in which John Mecom was a principal or (6) John Mecom.

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(1)

RIDGE RESOURCES COMPANY

A. ROWLAND BOUCHER
President

RUSSELL E. LEESER
Executive Vice President

Filed with
Miscellaneous
Items dated
April 23, 1974

MR Theodore Von Stein
Division of Enforcement
Securities and Exchange Commission
Washington D.C 20549

DEAR MR. VON STEIN.

I received today, April 19, 1974 your letter, an attachment and a subpoena, dated April 8, 1974, to appear at the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC. at 10:00 o'clock a.m. on Monday the 29th day of April, 1974.

My response to the receipt of these papers was to call you and to inform you that I do not have any documents pertaining to the subject matter described in your correspondence and suggested to you that whatever documents there are would be in the files of Ridge Resources Company under the control of Charles A. Baer, Trustee.

In view of our conversation you informed me that: (a) it would not be necessary for me to come to Washington; (b) you would be coming to Denver in the next month or so; (c) you would contact me and arrange a time for my deposition to be taken (d) should my deposition also take place there would be a recorder present and (e) I would be best advised to have legal representation.

Would you evidence your concurrence to my understanding of our conversation by signing the enclosed copy of this letter and returning same to me.

Yours truly

G. Rowland Boucher

DIAMOND HILL • SUITE 1600 • 2480 W. 26TH AVENUE • DENVER, COLORADO 80211 • (303) 433-0330

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OFFICE COPY-ENTERED

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

GENERAL MOTORS CORPORATION.

Criminal Action No. 61-CR-356

5/22/61

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER THIS ACTION TO THE NORTHERN DISTRICT OF ILLINOIS

On April 12, 1961, a Grand Jury sitting in the Southern District of New York returned an indictment in this cause charging General Motors Corporation with monopolizing the manufacture and sale of railroad locomotives in the United States in violation of Section 2 of the Sherman Act. The offense charged has as its elements the possession by General Motors of monopoly power and the intent by General Motors to exercise that power.

The Grand Jury which returned the indictment in this cause was empaneled on November 17, 1959 and immediately commenced a 17-month investigation of defendant's activities in the manufacture and sale of railroad locomotives in the United States. During the course of the investigation, approximately 75 subpoenas duces tecum were issued out of this Court, and proceedings arising out of the issuance of these subpoenas were brought before more than half of the Judges of this Court.

This memorandum and the previously filed affidavits of George D. Haycraft and Sanford M. Litvack are submitted in opposition to defendant's

FILED 5/22/61

Exhibit on Change of Venue Motion

motion for an order under Rule 21(b) of the Federal Rules of Criminal Procedure[1] transferring this action to the United States District Court for the Northern District of Illinois.

ARGUMENT

I

A CRIMINAL ANTITRUST CASE SHOULD NOT BE TRANSFERRED UNDER RULE 21(b) IN THE ABSENCE OF AN AFFIRMATIVE SHOWING BY THE DEFENDANT THAT THERE ARE NO SUBSTANTIAL CONTACTS WITH THE FORUM SELECTED BY THE GOVERNMENT

Prior to the adoption of the Federal Rules of Criminal Procedure the Government's choice of venue in a criminal antitrust proceeding was final.[2] The liberal venue provision of the Clayton Act permits the Government to proceed against a corporation such as General Motors in virtually any District and Division in the United States without regard to the substantiality of the contacts with the forum, the location of the company's main place of business, or the availability of witnesses and documents.[3] Similar

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1 / "The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

2 / Samuel v. United States, 158 F.2d 229, 231 (5th Cir. 1946); Notes of the Advisory Committee on the Federal Rules of Criminal Procedure on Rule 21.

3 / The special venue provision of the Clayton Act provides, "That any suit, action or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district in which it is an inhabitant, or wherever it may be found." 38 Stat. 736 (1914); 15 U.S.C. § 22 (1952).

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results were often accomplished in other criminal proceedings by alleging a multi-state conspiracy. It was in reaction to this allegedly unreasonable forum shopping by the Government that Rule 21(b) was adopted. The Rule provides for the transfer of a criminal cause to another district or division in which the offense occurred, on the motion of a defendant, when the Court is satisfied that a transfer is in the "interest of justice".

The purpose of the Rule was not to require trial of a criminal case in the "best" or "most convenient" forum for the defendant; its purpose was to prevent the trial of a case in a jurisdiction selected by the Government without regard to the nature or the existence of any substantial relationship between the forum and the offence charged.

Unlike Section 1404(a), which provides for transfer of a civil case for "the convenience of parties and witnesses, in the interest of justice," Rule 21(b) contains no reference to the convenience or parties or witnesses. The convenience of parties and witnesses in criminal antitrust cases should not properly be accorded the significance which it appears to have been accorded under Section 1404(a) in civil cases, although it may be a factor in evaluating the substantiality of contacts with the forum selected by the Government. However, it has been pointed out that "this type of controversy [antitrust litigation] is generally not local in nature and transfers are usually prevented by the widespread public interest in the action and the multi-state location of witnesses and the parties' activities."[5]

4/ See, e.g., Fenning, New Federal Rules of Criminal Procedure, 56 Yale Law Journal 197, 225 (1947).

5/ Kaufman, Observations on Transfer Under Section 1404(a) of the New Judicial Code, 13 F.R.D. 235, 237 (1952).

Transfer of complex antitrust litigation on a showing by a defendant [illegible] its records and personnel are located elsewhere, in the absence of any affirmative showing by the defendant of a lack of substantial contacts with the forum selected by the Government, is certain to result in the complete nullification of the special venue provisions of the Clayton Act. The actual result will be the almost perfunctory transfer of complex antitrust cases to the district in which the defendant maintains its principal place of business, a result obviously not contemplated by Section 12 of the Clayton Act which provides that an antitrust action "may be brought not only in the judicial district whereof it [a corporation defendant] is an inhabitant, but also in any district wherein it may be found or transacts business * * *."

As Judge Kaufman has pointed out in United States v. Scott & Williams, Inc., 83 F.Supp. 531, 535 (S.D. N.Y. 1950), with respect to a motion to transfer a civil antitrust case under Section 1404(a),

> In evaluating the public interest in transfer of this action, weight must be given to the venue privilege afforded plaintiff by the antitrust laws . . .
>
> That special venue statute has not been repealed by the enactment of Section 1404(a), c.f. Ex parte Collett, supra, and it is only changes of the special venue privilege which Section 1404(a) purports to correct. Ferguson v. Ford, supra, p. 14. It is not denied that the corporate defendant is 'doing business' in this district to such an extent as to make it subject to the venue provisions of Section 12 of the Clayton Act. It is the opinion of this Court that the defendant Scott & Williams has a substantial business connection with this district, and must have it, therefore, no element of 'choice' in plaintiff's choice of a forum in this case. It [illegible] contention that the case should be transferred to the district where Scott & Williams' principal office is located is a correct one, the special venue provision would, in fact, be nullified. [Emphasis supplied.]

It is apparent that in any cause brought by the Government involving an alleged monopolization under Section 2 of the Sherman Act the defendant

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can demonstrate the desirability to it of having the matter tried in proximity to its main place of business. Such a result was obviously not contemplated by Section 12 of the Clayton Act. In the absence of an affirmative showing that the forum chosen by the Government is an inappropriate one, in that there are no substantial contacts between it and the alleged offense, a motion to transfer the cause to another forum should be denied.

Paragraph 24 of the indictment in this cause lists nine specific acts or series of acts performed by General Motors in the Southern District of New York in furtherance of the alleged monopolization. It is thus clear that this is not "a case wherein the government has seized upon some minimal jurisdictional contact with a district in order to bring a case in a district it finds more convenient or advantageous." United States v. Kimball Securities, Inc., 25 F.R.D. 172, 175 (S.D. N.Y. 1960, Kaufman, J.).

II.

THE SUBSTANTIAL NUMBER AND THE NATURE OF THE CONTACTS WITH THE FORUM PRECLUDE THE TRANSFER OF THIS CAUSE TO THE NORTHERN DISTRICT OF ILLINOIS

As previously stated it is the Government's position that the interests of justice require that a motion to transfer in a criminal antitrust case be denied in the absence of an affirmative showing by the defendant that there are no substantial contacts with the forum chosen by the Government. No such affirmative showing has been made in this case. The Government believes that the situs of the acts alleged in the indictment, as well as the location of its witnesses and the nature of the case, i.e., its national character, justify the conclusion that the Southern District of New York is the proper venue for trial of this cause.

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(3) The venue in this case is based upon acts committed by the defendant within this District in furtherance of the alleged monopolization. Indeed, Paragraph 24 of the indictment sets forth nine specific acts or series of acts performed by the defendant in this District in furtherance of the alleged monopolization. These allegations encompass various means by which defendant has used its power to monopolize the railroad locomotive industry, including use of its freight traffic, financing power, delivery schedules, plant locations, and overall financial resources. These acts, which occurred within this District, are a significant part of the Government's case. For example, according to the indictment, General Motors has exercised its monopoly power in many ways, including the financing of the sale or lease of railroad locomotives at rates its competitors could not profitably match. In this regard, one significant incident alleged by the indictment was the action of the Board of Directors and the Finance Committee of General Motors, meeting in this District, in altering a long-standing General Motors policy relating to financing. This policy change enabled General Motors to secure a large order for railroad locomotives, resulting in the exclusion of its competitors.

General Motors maintains its executive offices and a regional office for the sale of railroad locomotives in New York. In fact, the former General Sales Manager and Director of Sales of General Motors' Electro-Motive Division was located in its New York regional office for approximately fifteen years, during which time he directed or participated in many of the acts alleged in the indictment.

Another salient part of the indictment, as set forth in Paragraph 24, is the defendant's investment of funds for construction or enlargement of

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facilities to secure maximum productive capacity for the manufacture of railroad locomotives. Capital appropriations of this sort are approved by the Finance Committee (formerly the Financial Policy Committee) at meetings in New York, and the documents concerning such matters are located within this District.

Moreover, during the course of the Grand Jury proceedings the Government found that more than half of the witnesses called to testify before the Grand Jury were located within this District or closer to New York than Chicago. Furthermore, half of the officers and employees of General Motors who were called to testify before the Grand Jury were located in this District. The Government has submitted a list of 35 potential witnesses it may call at trial (Exhibit A to Meycraft affidavit). Excluding defendant's employees, 22 of 27 prospective witnesses, or more than 80%, reside in this District or closer to New York than Chicago. These witnesses are not employees of the defendant but are, for the most part, railroad officials; therefore, not being parties to this action, they should receive every possible consideration from the Court. If the trial is held in New York many of these witnesses will suffer a minimum of inconvenience. It should be noted that only three of the Government's potential witnesses, including defendant's employees, reside in Chicago and more than 75% do not reside or work in or near Chicago.

It has been demonstrated that many of the acts alleged in the indictment occurred within this District; that the vast majority of the Government's witnesses reside in this District or closer to New York than Chicago; that General Motors maintains executive offices in this District; that defendant's Board of Directors and Finance Committee, which controlled and were directly responsible for many of the acts charged in the indictment, meet in this District; that General Motors maintains a Regional Office in this District, which was directly responsible for many of the

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acts charged; and that the cost to the Government in transporting documents to New York is not as great as transporting them to Chicago. Accordingly, the Government has made a strong affirmative showing as to the basis for the prosecution of this case in this District. (15)

III

EVEN UNDER DEFENDANT'S THEORY OF THE TEST TO BE APPLIED TO TRANSFER MOTIONS IN CRIMINAL ANTITRUST PROSECUTIONS THE MOTION SHOULD BE DENIED

It is the Government's position that the defendant must show that the venue has been laid in a forum which has no substantial connection with the alleged violations other than the fact that defendant is doing business in the jurisdiction and that the mere allegation by defendant that its plant and employees are located elsewhere is not sufficient to warrant a transfer. However, it appears even under defendant's theory of the test to be applied to transfer motions in criminal antitrust cases, the motion should be denied.

The especially heavy burden which the defendant must carry in the ordinary criminal case under a general venue provision was recognized by Judge Holohan in United States v. White, 95 F. Supp. 544, 548 (D.Neb. 1951) where he stated that the Government's choice of venue should not lightly be nullified.

And, even under Section 1404(a) in a civil cause, Judge Ryan has stated:

> First, it remains the law that a movant for relief under 1404(a) must show a preponderant balance in his favor, for it is only the exceptional case which

merits relief under this section. The defendants' suggestion that it is my function to weigh the convenience of the parties and making a nice balance award the suit to that district court, which, of several forums, appears to be most convenient, is rejected. Such a theory would create administrative difficulties entirely unjustified by any beneficial result, require a court to reach a conclusion which could not be reached with any degree of assurance and deprive plaintiff of any certainty in its selection of [illegible]. Since a defendant might often show that although [illegible] forum was not highly inconvenient, another was slightly more desirable, the venue provisions would become little more than provisions regulating the [illegible] of service of summons, and section 1404(a) would substitute for a litigant's [illegible] judgment and option as to place of suit, that of the court. Such a change was not contemplated by Congress when it enacted this section. Lowenstein v. Pearl Water Co., 89 F.Supp. 45, 50-51 (S.D. N.Y. 1950).

* * *

[illegible] . . . Further, New York has a substantial contact with the litigation in that important parts of the conspiracy are alleged to have occurred in New York . . . . And this action [illegible] which had no contact at all with the conspiracy except that the conspirators [illegible] to do their business there, the case might differ. New York is the site of events and occurrences which give rise to the claims. Accordingly, jury service by New York citizens is not an imposition, nor is it one on this court no matter what the state of its calendar. Id. at 54-55. [Emphasis supplied.]

General Motors, in an effort to satisfy the heavy burden imposed upon it, seeks, in the Power affidavit, to convince the Court that every file of its Electro-Motive Division would have to be transported to New York in order to defend itself against the charges made in the indictment. The Power affidavit states that " . . . the defendant will be necessarily concerned with the facts as to every transaction with every railroad customer . . . ." [Emphasis supplied.]

It is obvious that the Government does not intend to introduce evidence relating to every sale of railroad locomotives made by General Motors since 1935 to every railroad nor is this necessary to prove a violation of Section 2 of the Sherman Act. The Government's proof will relate to specific actions

by the Corporation, and it is anticipated that the specific sales and transactions in issue will be made known to defendant well in advance of trial. It will be these specific transactions to which the defense must address itself in cross-examining Government witnesses, and this can be accomplished by the use of a limited number of documents obtainable well in advance of trial. Indeed, the Foum affidavit clearly states that General Motors maintains its railroad locomotive files by customer and order. It therefore should be relatively easy for the defendant to extract the limited number of documents required in connection with the cross-examination of the Government's witnesses.

Defendant has also stated its intention to call as witnesses "a representative number of railroad officials from Class I railroads." Surely, defendant will know in advance of the trial which witnesses it will call and can have the limited number of necessary documents in New York at that time.

Defendant states that its defense will rest upon the alleged superiority of its product. In this regard General Motors claims that it is "likely" that it will request a view of some "typical locomotives", demonstrations, and mock-ups. The Government cannot see the need for a view such as suggested by General Motors inasmuch as it presently appears that all issues can be resolved without a view. However, assuming that a view would be helpful to the Court in assessing General Motors' claim of "superior product," a view of General Motors, competitors' facilities in Schenectady, New York, (Alco Products, Inc.) and Erie, Pennsylvania (General Electric Company) would be necessary.

Defendant also refers to its need at the trial for all of its engineering files and technical personnel to support its claim of product superiority. In assessing this claim, the Court would need comparable data from Alco and General Electric. This would involve the transportation of Alco's

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technical and engineering files from Schenectady, New York, to Chicago, and the transfer of similar General Electric files from Erie, Pennsylvania, to Chicago. Both of these companies maintain executive offices in this District and will not be as greatly inconvenienced by trial in New York as they would by trial in Chicago. As third parties these companies should be given the utmost consideration.

It would appear from the affidavits submitted by General Motors that it will need approximately 40 of its employees in New York throughout the entire trial to aid its counsel. However this estimate is questionable since it is likely that defendant will, prior to trial, have received from the Government not only a bill of particulars but also copies of all material documents in the Government's possession which General Motors does not presently have. With this information defendant will know the specific transactions placed in issue; this will greatly limit the number of employees General Motors will need at the trial. It is unlikely that defendant will need 40 of its employees in New York throughout the trial, and it is possible that no single employee will be needed at all times during the trial.

The defendant also indicates, in the Miller and Maddaus affidavits, that this cause should be transferred because "Chicago is the center of the railroad industry." The Government fails to see the relevance of such fact or the relevance of the fact that the Chicago Museum of Science and Industry maintains permanent exhibits relative to the railroad industry as alleged in Maddaus's affidavit.

In view of the foregoing it is clear that the defendant has not carried its burden even under its view of the law.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- : 75 Cr. 70 (MEF)

JOHN M. KING and :
A. ROWLAND BOUCHER, :

Defendants. :

----------X

BOUCHER MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS THE INDICTMENT

The defendant Boucher respectfully submits this memorandum in support of his motion to dismiss this indictment on the grounds (a) that the United States abused its authority in presenting the facts of this case first to a federal grand jury in Denver, Colorado, and failing to obtain an indictment there, representing the facts in this case to a grand jury in this District, and (b) that the delay in bringing this indictment has materially prejudiced his rights to adequately defend against it and has cost him the testimony of a central witness, Edward Cowett.

All of the facts which we believe are relevant to a determination of this motion are set forth in the

Exhibit B

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affidavit of Mr. Boucher, dated March 19, 1975 and in the affidavit of Peter Fleming Jr., Esq., dated March 20, 1975.

POINT I

THE INDICTMENT SHOULD BE DISMISSED BY REASON OF THE GOVERNMENT'S UNCONSCIONABLE AND PREJUDICIAL DELAY IN RETURNING THIS INDICTMENT

As we have noted, the transactions underlying this indictment occurred in 1969 and 1970, and the indictment was not filed until two days prior to the expiration of the applicable statute of limitations, even assuming that the overt acts which satisfy limitations are genuine. This delay in and of itself would seem to raise a substantial question as to Boucher's right to dismissal of the indictment. But any doubt as to the resolution of that question necessarily should be resolved in Boucher's favor once the circumstances of the delay, and its result, are examined.

Boucher himself was first questioned by the SEC about the transactions in issue in the Spring of 1970. The government therefore is in no position to claim that the passage of time between the alleged offense and the indictment was caused in any part by lack of knowledge on its part of the events in question. Indeed, further

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questioning of Boucher himself took place in 1971 and 1972, a formal order of investigation into precisely these events issued from the SEC in July 1973, and it would appear that evidence concerning these events was presented to a federal grand jury in Denver as early as January 1974. On this record, we can conceive of no legitimate reason which would explain the prosecution's failure to bring indictment until January 19, 1975, two days before the expiration of limitations.

Moreover, and of principal significance, the long delay between discovery of the transactions and the indictment itself has caused material damage to Boucher's ability to defend himself. The indictment alleges that the purported fraud was precipitated by one Edward Cowett, a Director of both FOF and IOS, who in 1969 "requested KRC to sell a portion of FOF's interest in the Canadian arctic oil and gas permits in order to permit FOF to revalue the entire FOF investment in the Canadian arctic oil and gas permits." (Ind., par. 16). The testimony of Cowett clearly would have been central to a determination of Boucher's case. Yet Cowett died in 1974, some four years after the SEC first became aware of the transactions in question, and is no longer available as a witness, through no fault on Boucher's part.

We submit most respectfully that the circumstances in this case combine to establish (a) a culpable delay on the part of the United States in bringing these charges

to indictment, and (b) a substantial and material resulting prejudice to Boucher's right to defend himself adequately. Given such circumstances -- and we know of no case which combines them to such a degree -- we believe that the indictment must be dismissed.

The most recent leading case which we have discovered in this area is United States v. Marion, 404 U.S. 307 (1971). There a somewhat divided Supreme Court rejected the argument that a three year delay between offense and indictment was sufficient to require its dismissal. It is interesting to note however that Mr. Justice Douglas, in his concurring opinion, noted specifically that a three year delay, even with regard to a complicated case, goes "to the edge of a permissible delay." Id., 404 U.S. at 293.

The indictment in the Marion case charged fraud in connection with the operation of a business known as Allied Enterprises, Inc. The motion to dismiss for delay in indictment was based entirely upon a claim that "the delay was due to the negligence or indifference of the United States Attorney ***." The mojority opinion noted specifically that "no specific prejudice was claimed or demonstrated" Id., 404 U.S. at 310.

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The majority opinion, over a strong disagreement by Mr. Justices Douglas, Brennan and Marshall, held that the Sixth Amendment right to a speedy trial did not include delay prior to an indictment. It noted however that this consideration did not finally determine the question of dismissal and based its opinion, not on the absolute absence of a right to dismissal based upon delay in indictment, but upon the failure of the defendants to demonstrate either "actual prejudice to the conduct of the defense" or "that the Government intentionally delayed to gain some tactical advantage over appellees or to harass them." Id., 404 U.S. at 325. Indeed the majority opinion took note of the government's concession that the Due Process Clause of the Fifth Amendment would require dismissal of an indictment by reason of pre-indictment delay if substantial prejudice were shown or if it were established that the delay was an intentional device to gain tactical advantage. Id., 404 U.S. at 324.

The concurring opinion in the Marion case, per Mr. Justice Douglas, disagreed with the majority's determination that the Sixth Amendment right to a speedy trial did not include pre-indictment delay. It based its concurrence upon the absence of a demonstration of prejudice, and upon its unwillingness to penalize the prosecution for pre-indictment delay with regard to complicated investigations involving "organized crime as well as others who use a far flung complicated network

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to perform their illegal activities." Id., 404 U.S. at 335. Mr. Justice Douglas stated, Ibid:

> "If this were a simpler crime, I think the British precede t which I have cited would warrant .ismissal of the indictment because of the speedy trial guarantee of the Sixth Amendment."

Even so, as we have noted, Mr. Justice Douglas also stated his opinion that a three year delay even in a complicated case "goes to the edge of a permissible delay."

We believe that dismissal of Boucher's indictment is required even under the majority view in the Marion case. Substantial prejudice has resulted from the delay with the death of Cowett in 1974. Moreover, while we cannot allege that the pre-indictment delay was intentional, it seems clear at least that culpability exists in circumstances where the United States has knowledge of questioned transactions in 1970 and does not return an indictment until 1975, barely before the expiration of a period of limitations which itself is satisfied only by the allegation of a single overt act. The totality of the circumstances in this case seem clearly to satisfy both criteria set forth in the majority's opinion in the Marion case, constitute a substantial violation of Boucher's Fifth Amendment right to due process, and more than justify the dismissal of this indictment.

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POINT II

THE INDICTMENT SHOULD BE DISMISSED BY REASON OF THE GOVERNMENT'S UNCONSTITUTIONAL FORUM-SHOPPING

The transactions underlying this indictment occurred in 1969 and 1970. The last overt alleged was on January 21, 1970. The indictment was filed in New York on January 19, 1975, just two days prior to the expiration of the statute of limitations.

The transactions in question almost totally involved conduct either in Denver, Colorado or in Geneva, Switzerland. Venue in this District is based entirely upon the alleged sending to this District of two letters and other matter in December 1969 and January 1970.

The United States appears to have presented its evidence underlying this indictment to a federal grand jury impaneled in Denver, Colorado, which seemingly took no action. The United States then decided to choose this District for the representation of that evidence, obviously in the hope that a grand jury in this District would return an indictment which a grand jury in Denver had not. Mr. Boucher contends that this action was so blatantly designed to subvert his constitutional right to indictment by his peers and was so improper as to require dismissal of this indictment.

An accused in a federal criminal case possesses two vital and fundamental protections which the authors of the Constitution deemed essential to protect against abusive exercise of the prosecutive power. The first of these is that no person can be accused of a felony except by indictment by a grand jury. The second, and by no means less important, is that a defendant may be indicted and tried only in a district where the offense was committed. Those rights are secured by Article III, Section 2, Clause 3 of the Constitution and by the Fifth and Sixth Amendments thereto. The thrust of these constitutional protections is to assure that no individual would be called to answer criminal charges except upon the independent judgment of his peers.

The right to indictment by a grand jury is a most basic right. Grounded upon the well-founded suspicion that the authors of the Constitution harbored with respect to the government and its prosecutors, this right was designed to protect a citizen from harassment and subjection to unfounded and improper accusations. As many courts have held, the grand jury was designed to operate as a bulwark between the prosecution and the citizen by interposing the independent judgment of grand jurors as the "primary security to the innocent against hasty, malicious and oppressive prosecution." Wood v. Georgia, 370 U.S. 375, 390 (1963). See also, United

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States v. Payton, 363 F.2d 996 (2d Cir.), cert.denied, 385 U.S. 993 (1966); United States v. Umans, 368 F.2d 725 (2d Cir. 1966); United States v. Arcuri, 405 F.2d 691 (2d Cir. 1968), cert. denied, 395 U.S. 913 (1969); United States v. Filippatos, 307 F. Supp. 564 (S.D.N.Y. 1969).

Notwithstanding the clear pronouncements of the courts as to the historic function of the grand jury, prosecutors have, from time to time, endeavored to subvert this very basic constitutional protection in various ways and has been properly rebuked for its attempt. For example, in Estepa v. United States, 471 F.2d 1132 (2d Cir. 1972) where the prosecution presented hearsay evidence to the grand jury under circumstances where the grand jury might well have been misled as to the nature and quality of the evidence presented, our Court of Appeals dismissed the indictment. That Court stated, 471 F.2d at 1136-1137:

> "When the framers of the Bill of Rights directed in the Fifth Amendment that 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,' they were not engaging in a mere verbal exercise. The importance of avoiding undue reliance upon hearsay before a grand jury is heightened by this circuit's view that an indictment constitutes a finding of probable cause and avoids the need for a preliminary hearing under F.R.Cr.P. 5(c).

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* * *

The many opinions in which we have affirmed convictions despite the Government's needless reliance on hearsay before the grand jury show how loathe we have been to open up a new road for attacking convictions on grounds unrelated to the merits. We have been willing to allow ample, many doubtless think too ample, latitude in the needless use of hearsay, subject to only two provisos -- that the prosecutor does not deceive grand jurors as to 'the shoddy merchandise they are getting so they can seek something better if they wish,' United States v. Payton, supra, 363 F.2d at 1000 (dissenting opinion), or that the case does not involve 'a high probability that with eyewitness rather than hearsay testimony the grand jury would not have indicted.' United States v. Leibowitz, supra, 420 F. 2d at 42; United States v. Arcuri, 282 F. Supp. 347, 350 (E.D.N.Y.), aff'd, 405 F.2d 691 (2 Cir. 1968). We had hoped that, with the clear warnings we have given to prosecutors, going back to United States v. Umans, 368 F.2d 725, 730 (2 Cir. 1966), cert. granted, 386 U.S. 940, 87 S.Ct. 975, 17 L.Ed.2d 872 cert. dismissed as improvidently granted, 389 U.S. 80, 88 S.Ct. 253, 19 L.Ed.2d 255 (1967), and the assurances given by United States Attorneys, see United States v. Arcuri, supra, 405 F.2d at 693 & n. 4, a reversal for improper use of hearsay before the grand jury would not be required. Here the Assistant United States Attorney, whether wittingly or unwittingly -- we prefer to think the latter, clearly violated the first of these provisos. We cannot, with proper respect for the discharge of our duties, content ourselves with yet another admonition; a reversal with instructions to dismiss the indictment may help to translate the assurances of the United States Attorneys into consistent performance by their assistants."

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The facts of Boucher's case constitute an even more egregious subversion of the grand jury's protection, which would be rendered meaningless if our government is permitted the untrammeled right to represent a case for indictment as often and wherever it chooses.

It seems clear that a point must be reached where either the number of representments within the same district or, as is the case here, the added element of representment in a district remote from and having virtually no connection with the offenses alleged, erodes the protection the Constitution was designed to afford. Surely the grand jury cannot and will not properly fulfill its functions if the prosecution may roam at will around the country searching for a panel that will be conducive to its will, even if such a jury can be located only in a remote district having the barest factual contact with the offenses charged.

This is especially true where, as here, the prosecution's conduct not only subverts the defendant's right to be indicted by a grand jury but also infringes on the spirit, if not the letter, of the Sixth Amendment requirement that both indictment and trial be in the district of the offense. An accused's right to be indicted and tried in the place where an offense is committed resulted from the Colonial experience with the British practice of attempting to try Americans in

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English courts. Indeed it was this practice that constituted one of the principal colonial grievances that precipitated our ultimate rupture with the English. (See Appendix, annexed). Small wonder that the authors of the Constitution took pains to specifically protect against the possibility that the newly created Federal Government would attempt to revive that practice.

It is for this reason that the concept of venue in federal criminal cases is inextricably connected with the constitutional right of a defendant to be both indicted and tried by his peers in the district where he has allegedly committed the offense and to be protected from trial in a remote and inconvenient district. That such is the case is demonstrated by the discussions that took place when Rule 21, Fed. R. Crim.P., was proposed and enacted.

When Rule 21 was enacted there was great concern over the "rather shabby practice", especially in conspiracy cases, of the prosecution to forum shop for a favorable district which had sufficient factual contact to satisfy minimal Constitutional requirements of venue, but which, in effect, subverted the defendant's more basic Constitutional right to be tried by his peers. (See United States v. National City Lines, 7 F.R.D. 393, 395-396 (S.D. Cal. 1947) and Boucher's Memorandum on Venue, pp. 8-11).

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That concern reflected an awareness that the prosecution could by forum-shopping observe the letter of the Fifth and Sixth Amendments while at the same time doing violence to their spirit. Indeed, Rule 21 was so conscious of the Constitutional significance of venue that as enacted it provided for change of venue only at the defendant's own request and not at the request of either the Court, the prosecution or a co-defendant.

It follows that where, as here, the government has subverted the right of the defendant to be indicted and tried by a jury of his peers in the district of offense, that conduct should not be countenanced and the indictment should be dismissed. Having submitted the case to a grand jury in the District of Colorado -- the district in which the spirit, if not the letter, of the Sixth Amendment requires indictment -- the prosecution should not be permitted at the last hour to represent that evidence to another grand jury which was not in any real sense that jury of peers contemplated by the Constitution.

It is no answer that there may be a technical connection within the Southern District of New York sufficient to satisfy minimal constitutional requirements. In Estepa, supra, there was no doubt that a grand jury could properly rely on hearsay and that no constitutional

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prohibition barred its use. Nevertheless, in the exercise of its supervisory powers, the Second Circuit held that the manner in which the prosecution presented the hearsay to the grand jury was such as to warrant dismissal. Similarly, in this case, the very real subversion of the defendant's Fifth and Sixth Amendment protections requires dismissal. Indeed as in Estepa dismissal is the only effective way to discourage the prosecution's conduct, which is flatly inconsistent with and even contemptuous of the spirit and meaning of our Constitution.

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POINT III

AT THE VERY LEAST, A HEARING SHOULD BE ORDERED, WITH ADEQUATE DISCOVERY, TO ASSIST THE COURT IN THE DETERMINATION OF THIS MOTION TO DISMISS

At the very least, an evidentiary hearing, with adequate discovery, would seem appropriate for the determination of this motion in two respects:

(a) To determine whether the evidence underlying this indictment had previously been presented to a federal grand jury in the District of Colorado which took no action.

(b) To determine whether Cowett's lost testimony was in fact exculpatory of Mr. Boucher with the result that Cowett's death in 1974 materially prejudiced Boucher's right to defend himself.

We believe that adequate discovery in the circumstances would require the production of any and all grand jury testimony, and statements of Cowett; any other grand jury testimony given before the federal grand jury in the District of Colorado; and any and all internal government memoranda dealing with the choice of this District as the District of indictment.

Cowett's prior testimony and statements are relevant to establish the exculpatory nature of his evidence.

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The grand jury testimony in the District of Colorado, including Cowett's, are relevant to establish that evidence of the transactions underlying the indictment in this District were presented to a federal grand jury in the District of Colorado which took no action.

Internal government memoranda are relevant to establish the state-of-mind with which the government acted in ultimately choosing this District as the District of indictment.

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CONCLUSION

The indictment against Boucher should be dismissed.

Dated: New York, New York
March 20, 1975

Respectfully submitted,

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APPENDIX

It is clear from the history of the struggle between the colonies and the Crown that the colonists regarded the right to be indicted by a Grand Jury in the district of offense as part and parcel of the right to be tried there. When confronted by acts of the English Crown which would have permitted colonists to be charged and tried in England, the colonists' response thereto made it clear that the colonists regarded both rights as inextricably connected.

In 1769, after a "grand debate," Parliament passed a resolution, addressed to the King, requiring the governor of Massachusetts Bay to transmit all information of treasonous activities by any person to the King:

> ". . . in order that your Majesty may issue a special commission for enquiring of, hearing, and determining, the said offences within this realm, pursuant to the provisions of the statute of the 35th year of the reign of King Henry the eighth." (Emphasis Added) 16 Hansard, Parliamentary Debates to the year 1803, pp. 476-480 (1813).

Upon receiving news of the action of Parliament, the Virginia Legislature passed resolutions later known as the "Virginia Resolves," which provided, in part:

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> "Resolved, That it is the Opinion of this Committee, that all Trials for Treason, Misprison of Treason, or for any Felony or Crime whatsoever, committed and done in this his Majesty's said Colony and Dominion, by any Person or Persons residing therein, ought of Right to be had, and conducted in and before his Majesty's Courts, held within the said Colony, according to the fixed and known Course of Proceeding; and that the seizing any Person or Persons, residing in this Colony, suspected of any Crime whatsoever, committed therein, and sending such Person, or Persons, to Places beyond the Sea, to be tried, is highly derogatory of the Rights of British subjects; as thereby the inestimable Privilege of being tried by a Jury from the Vicinage, as well as the Liberty of summoning and producing Witnesses on such Trial, will be taken away from the Party accused." Journals of the House of Burgess, 1766-1769, Kennedy ed., 214 (1906).

The Virginia Resolves were promptly passed by the assemblies of the other American Colonies. See, Cambridge History of the British Empire 668 (1929).

Parliament then passed 12 Geo. III, c. 24 (1772), later known as one of the "Intolerable Acts" which provided that persons charged with destroying any of the King's dock yards, ships, ammunition and stores "out of this realm" may be indicted and tried in any "shire or county within this realm." (See 43 Mich. L. Rev. at 63). Not unexpectedly, the colonies condemned this act in 1774 when the first Continental Congress declared:

> "That the following acts of Parliament are infringements and violations of the rights of the colonists. . . .
>
> "Also the 12 Geo. 3, ch. 24, entitled 'An act for the better preserving his Majesty's dock-yards, magazines, ships, ammunition, and stores,' which declares a new offense in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person charged with the committing of any offense described in the said act, out of the realm, to be indicted and tried for the same in any shire or county within the realm." Documents of American History, 9th Commager ed., 83-84 (1973).

It is clear therefore that the Sixth Amendment was intended to secure the right to be indicted as well as to be tried by one's peers.

> "When the provisions of the Bill of Rights were adopted and amendments thereto, there was conferred on each defendant a personal right to be indicted, tried and convicted in the state where the crime was alleged to have been committed. As an additional safeguard, there was created as a right of a defendant the necessity for a trial court in a federal judicial district, whose boundaries might be co-extensive with but could not exceed those of the state within which it was erected. Here and here alone had this court power to indict, try and sentence a defendant. The judicial structure was so tied into the personal right of a defendant by these interlocking provisions that one could not be waived without destroying the other." United States v. Bishop, 76 F. Supp. 866, 868-869 (D. Ore. 1948).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
v.	75 Cr. 70 (MEF)
JOHN M. KING and A ROWLAND BOUCHER,	KING NOTICE OF MOTION TO DISMISS INDICTMENT OR TRANSFER TO DISTRICT OF COLORADO
Defendants.	[for referral to Judge Frankel after docketing]

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Michael F. Armstrong, Esq., sworn to on the 20th day of March 1975, upon the affidavits of Peter Fleming, Jr., Esq., sworn to on the 20th day of March 1975 and A. Rowland Boucher, sworn to on the 17th and 19th days of March 1975, and incorporated by reference herein, upon the Indictment herein, and upon all of the papers and proceedings heretofore had herein, the undersigned will move this Court at a Motion Part to be held before the Honorable Marvin E. Frankel, United States District Judge, in the United States Courthouse, Foley Square, New York, New York at a time and place to be fixed by the Court:

1. For an order pursuant to Rules 12 and 48 of the Federal Rules of Criminal Procedure dismissing the Indictment as to defendant King and, alternatively;

2. For an order pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure transferring this Indictment as to defendant King to the District of Colorado for trial; and

Exhibit C

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3. For such other relief as the Court may deem just and proper.

Dated: New York, New York
March 20, 1975

Very truly yours,

BARRETT SMITH SCHAPIRO & SIMON

By Michael F. Armstrong
A Member of the Firm
Attorneys for John M. King
26 Broadway
New York, New York 10004
212-422-8180

TO: HON. PAUL J. CURRAN
United States Attorney
Southern District of
New York
United States Court House
Foley Square
New York, New York

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	75 Cr. 70
vs.	:	AFFIDAVIT
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL F. ARMSTRONG, being duly sworn, deposes and says:

1. I am a member of the law firm of Barrett Smith Schapiro & Simon, 26 Broadway, New York, New York, attorneys for defendant John M. King in the above-entitled matter. This affidavit is respectfully submitted in support of defendant King's motions to dismiss the indictment, pursuant to Rules 12 and 48 of the Federal Rules of Criminal Procedure and, in the alternative, for a transfer of this indictment to the District of Colorado, or to a Federal District near the District of Colorado, for trial, pursuant to Rule 21b of the Federal Rules of Criminal Procedure.

2. Our firm was retained by the defendant King on Friday, March 14, 1975. On that date we made an oral request of the U.S. Attorney for his consent to a short adjournment of the return date for motions. This request

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was refused. We then made an oral request of the Court for an adjournment of the return date for motions to March 31, 1975. The Court declined to grant the requested adjournment. Mr. King flew to New York from his home in Denver, Colorado on Monday, March 17th, and I spoke with him for the first time about the facts relating to the case. We had spoken on several occasions during previous weeks, but those discussions were limited to questions involving his legal representation. Mr. King was able to stay in New York only until Tuesday evening, March 18th. I have attempted to assemble factual information and analyze relevant legal authorities for the purpose of being able adequately to advise my client as to matters which he might wish to raise by way of motion. The time has not been sufficient. Consequently, Mr. King joins in the motions made by his co-defendant, A. Rowland Boucher, and relies chiefly on the affidavits and legal memoranda submitted by Mr. Boucher in support of his motions insofar as the facts and legal arguments presented in such affidavits and memoranda apply to Mr. King.

3. This affidavit is submitted by counsel since Mr. King has been obliged to return to Denver because of a family emergency and is unable to execute an affidavit which can be submitted in New York within the time allotted. Mr. King will execute and file any necessary supporting affidavit with respect to any of the matters covered herein.

4. The following facts are submitted in support of the motions for dismissal of the indictment and a change

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of venue made on behalf of Mr. King to supplement those advanced by Mr. Boucher.

Motion to Dismiss the Indictment

5. Mr. King and Mr. Boucher have been subjected to an exhaustive inquiry by the Securities and Exchange Commission and by the United States Attorney's office in Denver, Colorado with respect to various aspects of their business affairs prior to 1970. As outlined in the affidavit of Peter E. Fleming, Jr., submitted in support of Mr. Boucher's motion, the facts underlying the instant indictment were made known to the SEC as early as the Spring of 1970, and a formal order of investigation covering these events was issued by the SEC on July 24, 1973.

6. It is apparent that the SEC was investigating the events leading to the instant indictment prior to the date of the order of investigation referred to above. Mr. King was called to give testimony before the SEC in 1970 and again in 1971. On both occasions he was questioned about matters relating to the events upon which the indictment against him is based. In the last few days Mr. King and I have contacted a number of individuals who were questioned by SEC attorneys in Denver and elsewhere in connection with the investigation of Mr. King's affairs. We have been informed that SEC interrogators, as early as 1971 or 1972, questioned witnesses at length about the matters which are the subject of the instant indictment.

7. It is also apparent that the SEC's investigation, which was centered in Denver, Colorado, was coordinated

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with the United States Attorney's office in that District A grand jury investigation into the business affairs of Mr. King and Mr. Boucher was in progress in Denver no later than January 7, 1974 when Mr. Boucher was subpoenaed to appear before the Grand Jury. On April 22, 1974, John King received a letter requesting him to appear before the Grand Jury in Denver which stated that Mr. King was a subject of the investigation and specifically referred to matters which subsequently were the basis of the indictment against him. A copy of this letter, in the form in which it was submitted as an exhibit in a civil case, is annexed hereto as Exhibit A.

8. In the conversations which Mr. King and I have had during the past few days with individuals who were questioned about these events, we have learned that in some instances witnesses were questioned by Assistant United States Attorneys in Denver, prior to 1974, with respect to the events leading to the instant indictment.

9. On the basis of the facts set forth herein and in the affidavits filed in support of Mr. Boucher's motion, it seems clear that the SEC was aware of the facts underlying the instant indictment as early as 1970; that the matter was investigated sporadically for a number of years by the SEC in cooperation with the U.S. Attorney in Denver, Colorado; that the Denver authorities saw no reason to obtain an indictment; and that, at the eleventh hour, a Grand Jury investigation was pressed in New York resulting in an indictment which escaped being barred by the statute of limitations by two days. The death in 1974

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of Edward Cowett deprived Mr. King no less than Mr. Boucher, of a vital potential witness on his behalf and the delay in confronting Mr. King with the charges against him has, therefore, severely prejudiced him in his ability to defend himself against those charges.

10. For the reasons set forth herein and in the affidavits and legal memorandum filed in support of Mr. Boucher's motion, it is respectfully submitted that the indictment herein should be dismissed.

MOTION FOR CHANGE OF VENUE

11. Mr. King has lived in Denver, Colorado since 1959. He is married and has four children, ages 10, 14, 16 and [illegible].

12. Since 1970, Mr. King has not traveled extensively in connection with his business activities and has spent almost all of his time in Denver. His business reverses occurring in 1970 have resulted in a severe shortage of available funds and, on June 1, 1971, Mr. King filed under Chapter XI of the Federal Bankruptcy Act. A number of civil lawsuits, all of which are centered in Denver, require his constant personal attention. In many of these lawsuits, Mr. King has been forced to proceed without an attorney because he lacks the funds to hire one.

13. The factors outlined in the affidavit submitted in support of Mr. Boucher's motion for a change of venue regarding the prohibitive expense of a trial in New York are equally applicable to Mr. King. In addition,

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Mr. King's wife has been seriously ill for the last year and a half. He has not, during that period of time, been able to be away from home for even moderate periods of time. It would be an extreme hardship for him and his family to be subjected to a trial in New York where he would be obliged to be away from his wife and children for many weeks, even months.

14. Although a trial in New York would be as oppressive for Mr. King as for Mr. Boucher, there are factors pertinent to Mr. King's situation which may make Denver, Colorado an equally inappropriate location for the trial. Mr. King is a very prominent person in Denver, and has received a great deal of publicity there in connection with his various business and civic activities. In the time available for the preparation of this motion it has been impossible to determine whether a trial in Denver would be surrounded by publicity which might prejudice Mr. King. If it appears that such would be the case, the matter could be transferred to a federal court close to Denver but outside the area of possibly prejudicial publicity. The federal district courts in Cheyenne, Wyoming, Albuquerque, New Mexico or Oklahoma City, Oklahoma might be appropriate.

15. For the reasons set forth herein and in the affidavit and legal memorandum filed by Mr. Boucher, it is respectfully submitted that Mr. King's motion for a change of venue should be granted.

Michael F. Armstrong

MICHAEL F. ARMSTRONG

Sworn to before me this
20th day of March, 1975.

JOAN FARRELL
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County

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United States Department of Justice
UNITED STATES ATTORNEY
DISTRICT OF COLORADO
323 U.S. COURT HOUSE, DRAWER 3615
TELEPHONE (303) 837-4184
DENVER, COLORADO 80202

April 22, 1974

Mr. John King
26 Sunset Drive
Englewood, Colorado 80215

RE: Appearance Before Federal Grand Jury

Dear Mr. King:

To insure that you have adequate time to arrange for and confer with counsel prior to your appearance before the federal grand jury as scheduled for 8:30 a.m., May 15, 1974, this is to advise you in advance that you are a subject of the grand jury's investigation into possible violations of various statutes of the United States including but not limited to Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10 b-5, and the mail and wire fraud provisions pursuant to 18, United States Code, Section 1341 and 1343. The matters about which you will be interrogated include but will not be limited to the alleged transfer of Imperial American Resource properties to Lark Oil Company in December, 1968, and to John Mecom in 1969; the calculation and publication of cash surrender values for Imperial American Resources from 1966 to 1971; the sale and purchase of Imperial American net operating profits interest (N. O. P. I.'s); land sales and/or transfers between the Colorado Corporation, King Resources, Imperial American Resources and/or Investors Overseas Services; the attempted take-over of Investors Overseas Services in 1970; any correspondence or communications including official corporate filings between yourself, King Resources, Imperial American Resources, on the one hand, and the Securities and Exchange Commission on the other.

Prior to proceeding May 15, 1974, you will again be advised that you are a subject of the grand jury's investigation, that you have a right to remain silent, that anything you say can and will be used against you in a court of law or other proceeding, that you have a right to the presence of counsel outside the grand jury room to confer with and seek counsel during your appearance, and that if you cannot afford counsel, one will be appointed to represent you during the proceedings. You will be asked if you understand each

EXHIBIT "A"
(Pencil marks by counsel)

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and every one of those rights and if you do, whether you wish to waive the rights and testify before the grand jury. You will also be advised that should you waive your rights and testify, you will be subject to the penalties of perjury under 18, United States Code, Sections 1621, 1623, and/or obstruction of justice under the statutes of the United States for willfully testifying falsely or willfully withholding information necessary to the grand jury's investigation.

We are confident that this letter will give you sufficient notice to prepare for your May 15, 1974, appearance. If you have any further questions, feel free to contact us, or, if you have counsel, please communicate through him.

Very truly yours,

JAMES L. TREECE
United States Attorney
By:

DANIEL J. SEARS
Assistant United States Attorney

W. ALLEN SPURGEON
Assistant United States Attorney

J. TERRY WILLIS
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA	:	75 Cr. 70
vs.	:	AFFIDAVIT OF SERVICE
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARY CORRARINO, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at New York, New York. That on the 20th day of March, 1975, deponent served the within Notice of Motion for an order dismissing the indictment or, alternatively, transferring the indictment to the District of Colorado, the within Affidavit and other supporting papers upon Assistant U.S. Attorney John R. Wing, by personally delivering copies to a receptionist at the Office of the United States Attorney on the ~~third~~ fourth floor of the United States Courthouse, Foley Square, New York, New York.

Mary Corrarino

Sworn to before me this
20th day of March, 1975.

Joan Farrell

JOAN FARRELL
Notary Public, State of New York
No. 31-[illegible]
Qualified in the County
Commission Expires March 30, 1977

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JRW:dlf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - : AFFIDAVIT IN OPPOSITION

JOHN M. KING and :
A. ROWLAND BOUCHER, 75 Cr. 70 (MEF)

Defendants. :
- - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN R. WING, being duly sworn deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and I am familiar with the facts and proceedings in the above-captioned matter.

2. This affidavit is submitted in opposition to the defendants' motions for dismissal of the indictment and a change of venue.

3. On January 20, 1975, Indictment 75 Cr. 70 was filed against the defendants King and Boucher charging them in four counts with securities fraud, mail fraud, wire fraud and conspiracy in violation of Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Section 1341, 1343 and 371. The indictment charges the defendants with defrauding the shareholders, directors and auditors of a mutual fund, The Fund of Funds (FOF), among

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others, by falsely representing that various oil, gas and other natural resource interests in the Canadian arctic and elsewhere purchased on FOF's behalf from defendants' King Resources Company (KRC) had far greater value than was actually the fact and by falsely representing that a partial sale of arctic oil and gas interests was sufficiently arms-length and bona fide to justify FOF's $100 million revaluation of its remaining arctic interests, thus promoting and justifying substantial additional purchases by FOF from KRC of oil, gas and natural resource interests. On February 3, 1975 both defendants entered a plea of not guilty to this indictment.

4. On March 19, 1975 defendants King and Boucher filed motions to dismiss the indictment on two separate grounds or in the alternative for a change of venue. Defendants' motion to dismiss the indictment is initially based on a claim "that the United States abused its authority in presenting the evidence in this case, first to a grand jury in the District of Colorado and, in failing to obtain an indictment there, thereafter presenting the evidence in this case to a grand jury in this District."

5. Defendants' claim is factually unsound and legally insupportable. (See accompanying memorandum of law) I have been advised by representatives of the United States Attorney's Office in the District of Colorado that

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their office did not seek, or present or fail to obtain any indictment containing any of the charges in this case to any grand jury in Colorado. In fact, the SEC Criminal Reference Report on this matter was not even completed and forwarded to the United States Attorney for the Southern District of New York until September, 1974. Substantially before that date, on information and belief, King and Boucher were subpoenaed to appear before a Denver grand jury which was investigating completely different fraud matters. These matters, which were specified in the April 22, 1974 letter from the Denver United States Attorney to John King (attached as Exhibit A to King's motion), did not concern the Arctic sales which are the subject of the instant indictment. The attached affidavit of Assistant United States Attorney Spurgeon, who was in charge of the Colorado investigation, is conclusive on this point.

6. Defendants further move to dismiss the indictment on the ground that government delay in bringing the indictment materially prejudiced their rights to defend against it by depriving them of the testimony of Edward Cowett, who died in 1974.

7. Defendants make absolutely no showing of how Cowett's testimony would have benefited their defense and thus clearly fail to establish a scintilla of prejudice resulting from his unavailability. Boucher, who submitted

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an extensive affidavit on the delay point, remains totally mute as to how or why Cowett's absence affects him, and King failed to submit an affidavit. On information and belief, Cowett's absence is actually a benefit to the defendants because there is every reason to believe that his testimony would only have assisted the Government in proving the charges in this indictment.

8. Defendants further allege that the indictment was not returned until one day before the expiration of the statute of limitations as a result of "culpable delay" on the Government's part. (The statute of limitations expiration date is some what debatable in view of the fact that at least one of the specific false representations charged in the indictment was not even made until May 1970.) Defendants acknowledge that they cannot claim the pre-indictment delay was intentional but argue that it was "culpable delay" by suggesting that the SEC and the United States Attorney's Office in Colorado have known of the fraud charged in this case since 1970. To the best of my knowledge, information and belief that is simply not the fact. The Securities and Exchange Commission issued a Formal Order of Investigation concerning this matter on July 24, 1973. (See Exhibit A to Boucher's Motion to Dismiss.) I have been advised by the SEC staff attorney in charge of the investigation that the

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preliminary SEC investigation which led to the SEC Formal Order was initiated in late June or early July 1973. Pursuant to the Formal Order the SEC staff conducted an extensive investigation interviewing more than 80 people and collecting and reviewing thousands of documents. On September 27, 1974, the Securities and Exchange Commission referred the case to the United States Attorney's Office in the Southern District of New York for possible criminal prosecution. In November 1974, a special grand jury was impanelled in the Southern District of New York to hear evidence in connection with that matter and on January 20, 1975, that grand jury filed this indictment charging King and Boucher with criminal fraud. I have been assigned to this matter since the case was referred to this office. Roughly four months have elapsed between the time the SEC referred the matter to this office and the filing of this indictment. That time was devoted to investigating and analyzing the relevant facts and presenting evidence to the grand jury. I categorically deny that there has been any intentional delay in seeking this indictment in order to gain some tactical advantage over the defendants or to harass them.

9. Defendants argue that the government cannot claim that "the passage of time between the alleged offense and the indictment was caused in any part by lack of knowledge on its part of the events in question," because Boucher was questioned in a phone call in the Spring of 1970 by an SEC representative about the arctic sale to Consolidated Oil and Gas. However, Boucher's description of that phone

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call does not include any reference to advising the SEC of the events constituting the fraud charged in the instant indictment and on information and belief, at the end of that phone call the SEC still lacked any knowledge of the fraud charged in the instant case.

10. With respect to that one phone call I have received the following information from Stanley Sporkin, Director of the Division of Enforcement of the Securities and Exchange Commission. In or about June 2, 1970, representatives of Consolidated Oil and Gas and others met with Sporkin and other SEC officials to discuss a proposed letter from the Chairman of Consolidated Oil and Gas to its stockholders concerning several matters including the company's purchase of Canadian Arctic permits from King Resources Company. In connection with certain statements in the proposed letter relating to the Arctic deal Stanley Sporkin did place a call to Boucher and there was some discussion of that transaction. Sporkin has advised me that Boucher did not inform him during that call of fraudulent conduct by King or Boucher in connection with that transaction and there was no SEC investigation of such fraudulent conduct either before or after that phone call until three years later when an investigation was initiated in July 1973. Sporkin did say that the SEC became aware of the $100 million revaluation of FOF's arctic properties after it was publicized in the media in January 1970, and thereafter made periodic inquiries of ICS attorneys concerning the details of the transaction.

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11. I have also been advised by former Assistant United States Attorney Gary P. Naftalis that in July 1970, while questioning Edward Cowett in connection with certain gold transactions by IOS mutual funds he also inquired about the arctic revaluation. According to Mr. Naftalis this brief inquiry on the arctic uncovered no evidence of fraud and the matter was not pursued in any way.

12. Defendants' suggestion that the SEC office in Denver was investigating this matter in 1970-1972 is also contrary to fact. On August 26, 1970, the Securities and Exchange Commission did issue a Formal Order of Investigation involving John M. King, et al., concerning matters other than the Arctic sale, a copy of which is attached hereto as Exhibit B. I have been advised by Joseph Krys an SEC attorney in Denver that it was in connection with that investigation that the SEC questioned Boucher and King in Denver in 1970, 1971, and 1972. It is apparent from the transcripts of that testimony that King and Boucher were well aware of the subject of that investigation because they were shown a copy of the Formal Order of Investigation.

13. Defendants have also filed motions requesting a change of venue pursuant to Rule 21(b) although they disagree as to where the case should be transferred. Boucher requests a transfer to Denver on the ground that the Government was improperly forum shopping when it sought an indictment in New York after being denied by a Denver grand jury. There is absolutely no factual basis for this claim and it should be summarily rejected. (See paragraph 5, supra)

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Boucher also claims that it would constitute an "enormous" personal and financial hardship for him to stand trial in New York as opposed to Denver. King seeks to avoid trial in New York on the same ground of personal hardship but argues that Denver would be "an equally inappropriate location for the trial." Accordingly, he seeks a transfer to Cheyenne, Wyoming, Albuquerque, New Mexico or Oklahoma City, Oklahoma.

14. Many of Boucher's allegations of personal hardship are based on the assumption that a New York lawyer will represent him at this trial. In that connection he complains that adequate preparation of his defense will require periodic but substantial time in New York prior to trial and that New York counsel are more expensive than Denver counsel. Without challenging the relative cost of counsel, it would appear that this problem is obviated by the fact that a Denver attorney has appeared as Boucher's trial counsel. In any event Boucher alleges that these expenses are covered by an indemnification agreement with King Resources Co. Boucher also alleges personal and business reasons that require his constant presence in Denver. Such claims are somewhat inconsistent with his application for an extension of bail limits to include the states of Illinois, Missouri, California, Wyoming, Montana, Texas and Oklahoma and his motion papers indicating additional travels to West Virginia and Mississippi.

JRW:ma

15. King's allegations of personal and business reasons for remaining near the Denver area parallel Boucher's with the added claim that his wife has been seriously ill for the last year and a half. Such claims are equally inconsistent with defendant's application for an extension of bail limits which cover the entire Continental United States plus Mexico, Canada, Alaska and Hawaii. I have been advised by one of King's attorneys, Gene M. Hoffman, that these extensive bail limits are necessary because King's business activities require him to consult with landowners, businessmen, geologists and bankers "all over the world." Specifically, Mr. Hoffman advised that as of February 10, 1975 King's position as President of a Canadian cattle company required him to travel to cattle auctions in Canada and throughout the United States. In addition, as of February 10, King was planning to spend four to six weeks in Mexico investigating another business opportunity and was also required to make frequent trips to supervise certain properties owned by his children's Trusts in Hawaii, Canada and throughout the United States. None of these activities would appear to satisfy the alleged need to remain near Denver on which this transfer motion is based. During 1969 and the first half of 1970, when many of the activities charged in the indictment took place, on information and belief, King was away from Denver almost 50% of the time and Boucher was away more than 10% of the time.

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JKW:dlf

16. In further support of their transfer motion defendants claim that "all or virtually all" of the conduct alleged in the indictment took place in Denver or Geneva and that all or virtually all of the witnesses reside in or near Denver and perhaps in Europe. That is not the fact. The proof will show that the activities and transactions referred to in the indictment took place in numerous locations which include both New York and Denver, as well as Geneva, Chicago, Hawaii, Houston, Tulsa and Calgary. More important, the consequences of this fraud affected over 150,000 shareholders of the Fund of Funds ("FOF") who are scattered throughout the world including at least 2,000 in the United States. At trial the Government intends to call witnesses from all of the above named locations except Hawaii as well as from other locations outside the United States. New York, is of course, far more convenient than Denver for New York, Chicago and foreign witnesses, Calgary, Houston and Tulsa are sufficiently distant from both New York and Denver to make the differences of little consequence.

17. Contrary to defendants' claim, there are substantial connections between the events alleged in the indictment and the Southern District of New York. The proof will show various communications to, from, in or through New York between King or Boucher or their agents and FOF representatives relating to the arctic as well as to other natural resource

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JRW:ma

transactions referred to in the indictment. In fact, the proof will show that King, with Boucher at his side, personally and fraudulently promoted FOF's falsely inflated arctic valuation in a meeting with FOF directors and other FOF representatives in New York City. The proof will also show that one of the primary features of this fraud involved deceiving FOF's accountants, Arthur Anderson & Co. as to the validity and bona fides of the arctic sales in connection with Arthur Anderson's audit of FOF for 1969. The New York office of Arthur Anderson was one of three Arthur Anderson offices (the other two being Geneva and Denver) actively involved in that particular audit and in the particular footnote relating to the arctic transactions. Arthur Anderson's New York office normally did the bulk of FOF's audit work due to the fact that the vast majority of FOF's assets were held in New York.

18. On information and belief virtually every transaction referred to in the indictment, in which KRC sold oil, gas or other natural resource interests to FOF and its subsidiaries, was recorded in New York when KRC sent a copy of the invoice for each sale to FOF's New York agent and broker Arthur Lipper Company. Lipper was responsible for computing FOF's daily net asset value based on the value of all of its assets including natural resources. Moreover, the payment to KRC by FOF in connection with all natural resource sales referred to in the indictment including the arctic sales was made directly from FOF's New York bank.

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JRW:ma

More significantly the $10 million performance fee referred to in the indictment, which FOF paid out as a result of the falsely inflated revaluation of the arctic, was paid out of this same New York bank account. With respect to the arctic transaction referred to in the indictment, arctic sales agreements between KRC and FOF's subsidiaries (whereby KRC purchased from FOF an equivalent interest in the arctic permits to replace the interest sold by KRC to third parties) were all worked out with FOF's New York attorneys and signed in New York by a New York lawyer who was the signatory for FOF's subsidiaries. In fact, when KRC made payment to FOF pursuant to these contracts the money was wired to this same New York bank. It was in New York that FOF's Directors met and voted their approval of the arctic sales transactions and the resulting revaluation. The proof will show that the true facts of the arctic sales were deliberately concealed from the directors and that their approval was voted without any knowledge of the secret guarantees referred to in the indictment. Similarly, it was in New York that the Consolidated Oil and Gas Board of Directors met and ratified their arctic purchase from KRC.

19. In further support of their transfer motion defendants allege that they have never lived or worked in the Southern District of New York and that neither King Resources Co. (KRC) or FOF ever resided in this district. On information and belief these defendants, as the top two

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executive officers of KRC, operated a world-wide business with offices in Boston, Maine, Texas, California, New Orleans, London, Tel Aviv, The Hague, Johannesburg, and Ankara. It is not suprising, therefore, that King, Boucher and KRC all had substantial contact with New York during the period in question. In addition to the contacts referred to above, KRC expense records reflect that during 1969 and the first six months of 1970, King was in New York City a total of fourteen days and Boucher was here for seventeen days. King even purchased a cooperative apartment in midtown Manhattan from Maurice Stans during this period in addition to maintaining a company suite at the Carlyle Hotel. According to claims filed in connection with KRC's bankruptcy KRC utilized New York lawyers, a New York public relations firm, New York telex services and borrowed money from several New York financial institutions. With respect to FOF, three of the nine directors who approved the arctic sales and revaluation at a meeting at One Chase Manhattan Plaza are presently living or working in New York City. As indicated above, at the time of the alleged fraud FOF maintained substantial bank accounts here and relied heavily on the services of New York lawyers, New York investment advisors and a NewYork broker. Most of the Funds' assets in the form of securities were held at the Bank of New York on Wall Street.

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JRW:lma

20. Finally, it should be noted that in May 1974, FOF filed a civil suit in New York charging King and Boucher with violations of the federal securities laws in defrauding FOF and its shareholders of $120,000,000 in connection with sales by KRC to FOF of oil, gas and other natural resource interests. Although thesuit does not charge the same fraud alleged in the instant case, the natural resource transactions between KRC and FOF include those referred to in this indictment. I have been advised by the plaintiff's attorney that neither King nor Boucher have sought a change of venue in that lawsuit.

WHEREFORE, it is respectfully requested that defendants' motions be denied in all respects.

JOHN R. WING
Assistant United States Attorney

Sworn to before me this
day of April, 1975

Notary Public

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UNITED STATES DISTRICT CO
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	75-CR-70
	)	
Plaintiff,	)	AFFIDAVIT OF W. ALLEN SPURGEON,
	)	FIRST ASSISTANT UNITED STATES
v.	)	ATTORNEY, DISTRICT OF COLORADO,
	)	AND J. TERRY WIGGINS, DANIEL J.
JOHN M. KING and	)	SEARS AND JOHN M. KOBAYASHI,
A. ROWLAND BOUCHER,	)	ASSISTANT UNITED STATES ATTORNEYS,
	)	DISTRICT OF COLORADO
Defendants.	)	

W. ALLEN SPURGEON, J. TERRY WIGGINS, DANIEL J. SEARS and JOHN M. KOBAYASHI, being duly sworn, depose and state as follows:

1. I, W. Allen Spurgeon, am First Assistant United States Attorney for the District of Colorado. I have been employed in the office of James L. Treece, United States Attorney for the District of Colorado, continuously since August 17, 1970. I am familiar with and have had principal responsibility for all investigations conducted by the United States Attorney's office for the District of Colorado regarding John M. King and A. Rowland Boucher. Mr. J. Terry Wiggins, Mr. Daniel J. Sears and Mr. John M. Kobayashi, all presently employed as Assistant United States Attorneys in the District of Colorado, have assisted me in conducting these investigations. I am familiar with all investigations involving John M. King and A. Rowland Boucher which have been referred to this office during my tenure.

2. This affidavit is submitted at the request of Assistant United States Attorney John R. Wing in connection with motions filed in the above-entitled case alleging, inter alia, that the United States abused its authority in initially presenting the evidence in the above-entitled case to a grand jury in the District of Colorado and, after failing to obtain an indictment, presenting the same evidence to a grand jury in the Southern District of New York. W. Allen Spurgeon, J. Terry Wiggins, Daniel J. Sears and John M. Kobayashi have not seen a copy of the motions containing such allegations, but W. Allen Spurgeon and Daniel J. Sears have been advised of their content by John R. Wing.

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3. W. Allen Spurgeon and Daniel J. Sears have read a copy of the indictment from the United States District Court for the Southern District of New York captioned United States of America v. John M. King and A. Rowland Boucher, defendants, Indictment 75-Cr. No number appears on the copy of the indictment following Cr., but W. Allen Spurgeon and Daniel J. Sears have been informed by telephone by Mr. Wing that this copy is identical to the original indictment filed in the United States District Court for the Southern District of New York. W. Allen Spurgeon and Daniel J. Sears have discussed the matters contained in the indictment with Mr. Wing to a limited extent by telephone.

4. On April 27, 1973, the Department of Justice referred two cases for prosecutive consideration to the United States Attorney for the District of Colorado. The two cases involved John M King and A. Rowland Boucher and the Imperial American Resource Fund, Inc., the Imperial American Management Company, Colorado Corporation, Denver Corporation, and King Resources Company. The focus of the ensuing grand jury investigations was the attempted takeover of Investor Overseas Services and the sale of limited partnership interests in Imperial American Resource Fund. At no time did the grand jury investigations focus on Fund of Funds and the evaluation and sale of Arctic properties. At no time was an indictment presented to the grand jury in the United States District Court for the District of Colorado involving Fund of Funds or the Arctic properties.

W. ALLEN SPURGEON

J. TERRY HIGGINS

DANIEL J. SEARS

JOHN M. YOSHIYAMA

Subscribed and sworn before me this 17th day of April, 1975.

Notary Public

My commission expires [illegible], 1976.

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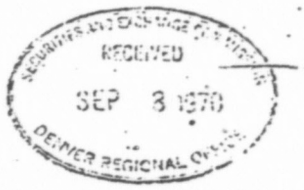
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

AUG 26 1970



In the Matter of

JOHN M. KING
THE COLORADO CORPORATION
THE DENVER CORPORATION
IMPERIAL-AMERICAN MANAGMENT COMPANY
IMPERIAL-AMERICAN RESOURCES FUND, INC.
ROYAL RESOURCES CORPORATION
ROYAL RESOURCES EXPLORATION, INC.
KING RESOURCES COMPANY
DENVER SECURITIES CORPORATION
REGENCY MANAGMENT COMPANY
REGENCY INCOME COMPANY
REGENCY INVESTORS COMPANY
GENERAL AMERICAN DEVELOPMENT CORPORATION
K-R FUNDS, INC.

File No. D-1407

ORDER DIRECTING EXAMINATION AND PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. The Denver Corporation ("Denver"), a corporation with its principal place of business at Brooks Tower Building, Denver, Colorado, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") since September 8, 1966.

B. Denver is a member of the National Association of Securities Dealers, Inc., a national securities association, registered pursuant to Section 15A of the Exchange Act.

C. The securities of King Resources Company ("King Resources") are registered with the Commission under Section 12 of the Exchange Act and are traded on the over-the-counter market. On January 15, 1970 King Resources filed a registration statement on Form S-1 under the Securities Act of 1933, as amended ("Securities Act") (File No. 2-35991) relating to a proposed pledge of 300,000 shares of common stock by certain shareholders to Dempsey-Tegeler Co., Inc.

EXHIBIT B.

D. John M. King ("King") owns approximately 16% of the outstanding stock of King Resources and until August 13, 1970 was Chairman of its Board of Directors.

E. K-R Funds, Inc. is a wholly-owned subsidiary of King Resources which also manages the investment programs of K-R Funds, Inc.

F. Imperial-American Resources Fund, Inc. ("Imperial-American Resources") is a wholly-owned subsidiary of Imperial-American Management Company ("Imperial-American Management") which manages it and, which, in turn, is a wholly-owned subsidiary of Colorado Corporation ("Colorado"). Imperial-American Resources filed a registration statement on Form S-1 under the Securities Act (File No. 2-35163) on October 25, 1969 covering a proposed public offering of $250,000,000 of oil and gas participation plans, investment contracts and pre-organization subscriptions in limited partnerships. The registration statement was declared effective on June 15, 1970.

G. Royal Resources Exploration, Inc. ("Royal Resources Exploration") is a wholly-owned subsidiary of Royal Resources Corporation which, in turn, is a wholly-owned subsidiary of Colorado. Royal Resources Exploration filed a registration statement on Form S-1 under the Securities Act (File No. 2-35903) on December 31, 1969 covering a proposed public offering of $100,000,000 of oil and gas participation plans, investment contracts and pre-organization subscriptions in limited partnerships. The registration statement was declared effective on May 11, 1970.

H. Denver is a wholly-owned subsidiary of Colorado which, in turn, is controlled by King.

I. King Resources has failed to file with the Commission certain reports required to be filed pursuant to Section 13(a) of the Securities Exchange Act

II

Members of the staff have reported to the Commission information which tends to show that:

A. King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration, King Resources, Denver Securities Corporation Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc. and others have been and are offering to sell, selling and delivering after sale to members of the public certain securities, namely, the securities of King Resources, Imperial-American Resources and Royal Resources Exploration.

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B. While engaged in the offer, purchase and sale of certain securities, namely oil and gas participation plans, investment contracts and pre-organization subscriptions issued by Imperial-American Resources and Royal Resources Exploration, King, Colorado, Denver, Imperial-American Managment, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration, King Resources, Denver Securities Corporation, Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc. and others have been and are making untrue statements of material facts and have omitted and are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things:

1. The safety of an investment in said securities;
2. The value of said securities; and
3. The ability of the purchasers of said securities to obtain the redemption value thereof.

C. King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration King Resources, Denver Securities Corporation, Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc., and others employed devices schemes and artifices to defraud and engaged in transactions, acts, practices and courses of business which operated as a fraud and a deceit upon the public in connection with solicitations to purchase, purchases and sales of said securities.

D. While engaged in the offer, sale and delivery of said securities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

E. Colorado and others, directly and indirectly, effected transactions in and induced and attempted to induce the purchase and sale of securities at a time when Colorado was not registered with the Commission as a broker-dealer as required by Section 15(a) of the Exchange Act.

F. On or about July 1, 1970, Denver and Colorado, directly and indirectly effected transactions in and induced and attempted to induce the purchase and sale of securities at a time when the aggregate indebtedness of Denver and Colorado to all persons may have exceeded 2,000 per centum of their respective net capital, computed in accordance with the provisions of Rule 15c(3)-1 promulgated under Section 15(c)(3) of the Exchange Act.

G. The registration statements of King Resources (referred to in Paragraph 1D above) of Imperial American Resources (referred to in Paragraph 1F above) and of Royal Resources Exploration (referred to in Paragraph 1G above) contain untrue statements of material facts or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading with respect to:

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1. Item 9, Description of Business; and
2. Item 20, Interest of Management and others in Certain Transactions.

III

The Commission having considered the foregoing, deems it appropriate and necessary that an examination and private investigation be made for the following purposes:

1. to ascertain the facts concerning the matters set forth in paragraph II G with respect ot King Resources;

2. to determine with respect to King Resources whether an order under Section 15(c)(4) of the Exchange Act should issue;

3. to determine whether there have been possible violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b); 15(a), 15(c)(3) of the Exchange Act and Rules 10b-5 and 15c3-1 thereunder.

IT IS ORDERED, pursuant to the provisions of Sections 8(e) and 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934, that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage in any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 19(b) of the Securities Act of 1933 and Section 21(b) of the Securities Act of 1933 and Section 21(b) of the Securities Exchange Act of 1934, that for the purpose of such investigation, Donald J. Stocking, Joseph F. Krys, John J. Kelly, Jr., John E. Jones, Donald N. Malawsky, Edward J. Leavitt, Ralph H. Tracy, Richard B. Messon, Leonard H. Rossen, Theodore Levine, James E. Newton, John W. Fegan, James E. Sims and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Orval DuBois
Secretary

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	75 CR. 70
-against-	:	MEMORANDUM
JOHN M. KING, A. ROWLAND BOUCHER,	:	
Defendants.	:	

FRANKEL, D.J.

Defendants move to dismiss the indictment for pre-indictment delay, contending that the Government has engaged in a species of "forum shopping" by indicting here after a Colorado grand jury refused to indict. Defendants argue further that the delay has resulted in prejudice because a potentially exculpatory witness, one Edward Cowett, died in August 1974, during the period of the allegedly unjustifiable delay in indicting.

The court has studied these contentions in detail, and has considered in camera grand jury testimony of Mr. Cowett given in Denver, Colorado, in April 1974, and in this District in June or July of 1970.

Exhibit E

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Upon all the materials thus examined, the court finds that the charge of intentional delay for hostile purposes or for so-called forum shopping rests upon unsubstantiated speculations. Taken together, all of the factors and contentions now before the court make it apparent that the alleged frauds of the people in and around this case were matters of enormous complexity, involving large casts of characters and activities spread widely across the world. There does not appear to be substance in the notion that the delay of which defendants complain was perpetrated with any purpose to cause disadvantage or prejudice or other prosecutorial mistreatment of either defendant.

The claim of prejudice is also highly speculative and unimpressive at this time. It is true, of course, that Mr. Cowett did in fact die during the time before the indictment. However, that he could have been a helpful witness for defendants or either of them seems exceedingly improbable on the basis of the information now available to the court. Moreover, where the delay was not maliciously occasioned it seems almost as improbable as a matter of law that the loss of this witness, even if he might

arguably have been helpful, could serve to defeat the prosecution. At least in all but the rarest kind of case, of which this does not appear to be an example, the law would require both a showing of prejudice and a demonstration "that the delay was an intentional device" before the prosecution could be barred. United States v. Marion, 404 U.S. 307, 324 (1971).

Even if the case might turn out to be one where the combination of prejudice and intentional delay could conceivably warrant defeat of the indictment, this is a kind of demonstration suitably to be attempted after trial, not before. A concrete trial record, with the case on both sides fully developed, is obviously preferable to a course of pretrial hearings to determine how, in light of a case not yet presented, the impact of the alleged prejudice should be appraised. See id. at 321 n.13, 324.

In sum, the motions to dismiss the indictment are denied. So ordered.

Dated, New York, New York
June 2, 1975

MARVIN E. FRANKEL

U.S.D.J.

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Denver Regional Office
March 10, 1971

MEMORANDUM OF INTERVIEW

PERSON INTERVIEWED: A. F. Frederickson
King Resources Offices
Security Life Building
Denver, Colorado

PERSON CONDUCTING INTERVIEW: John J. Kelly, Jr., Attorney

DATE OF INTERVIEW: March 10, 1971 at the Denver Regional Office approximately 9:00 a.m.

SUBJECT: King Resources Company (D-1407)

Prior to Mr. Frederickson's appearance at the Denver Regional Office (DRO), he telephoned the undersigned and inquired as to whether or not he could come over to the D&O and pick up a copy of the Commission's brief filed in the King action. Mr. Frederickson appeared at this office and the undersigned gave him a copy of the plaintiff's brief which he was to take with him to make a copy and then return this office's copy.

Mr. Frederickson stated that the Commission was falling down on its job because it would not be sufficient just to have the Court enjoin Boucher from acting as the Commission asked in its brief because Boucher was involved in so many self-dealings on a daily basis that the only way the company could survive was to get Boucher out of the company.

Mr. Frederickson then showed the undersigned a copy of a chart which he stated had been prepared by several people and that the chart appeared to be accurate although it was entitled "Speculation." Mr. Frederickson stated that the chart showed some of the dealings between John King, IOS, Consolidated Oil and Gas and John Mecom.

Mr. Frederickson stated that if the undersigned would assure a certain person that that person would not be prosecuted, Mr. Frederickson could furnish to the undersigned a lot of documents which would prove that there were a lot of side deals between King and others. The undersigned stated that he could not grant immunity and that only the Commission could grant immunity. Mr. Frederickson said that he understood this.

☐ Request search on person(s) named on attached Form SEC 555.
☐ Request input on person(s) named on attached Form SEC 551A.
☐ All or other pertinent persons have been searched.
☐ All of other pertinent persons have been input.
☒ Search or input unnecessary as to all or other persons.

Exhibit F

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Mr. Frederickson then folded a copy of what appeared to be a memo or a letter and showed the undersigned the bottom portion which did not indicate the author of the memo. The undersigned quickly reviewed that portion visible to him which contained statements to the effect that the author of the memo had been present and had seen the contract between King Resources and John Mecom, Sr. calling for Mr. Mecom's down-payment of $275,000 towards the purchase of interests in Arctic properties in late December 1969. The author also stated that there was a side agreement which did not appear in the contract. The side agreement called for the following: John King to provide the money for the down-payment; and to provide the drilling contract on the properties to Mecom which would assure sufficient net profits to cover the additional payments to be made by Mecom toward the purchase of his interests in the properties; and, a buy-out agreement from King to Mecom.

Mr. Frederickson also showed the undersigned a copy of a document headed "Memo", which document appeared to be a handwritten note signed by Timothy Lowry. Attached to this document was a copy of a letter from John King to John Mecom in which Mr. King stated that he would provide the $275,000 down-payment to Mecom and in addition would assure Mecom sufficient drilling profits to cover additional payments and also gave Mecom, Mr. King's buy-out agreement. Mr. Lowry's handwritten memo said something about he (Lowry) was going to keep the attached King letter to Mecom in Chicago along with other valuable papers.

Mr. Frederickson showed the undersigned a copy of a check drawn by Royal Resources Company (signed by its president, a Mr. Hardin) in the amount of $275,000 payable to John W. Mecom, Sr. The check appeared to have been dated sometime in early January 1970. Mr. Frederickson stated that this was the way that John King paid monies to Mecom so Mecom could make his down-payment on the Arctic properties.

The undersigned inquired if this office could perhaps obtain copies of the foregoing documents from Mr. Frederickson. Mr. Frederickson stated that copies could not be obtained and that, in fact, "you have never seen these documents." The undersigned said that this could not be the case and that the undersigned had seen the documents and that it would have to be reported that the documents were shown.

Mr. Frederickson went over some of the items diagramed in the chart. Mr. Frederickson stated that monies that Consolidated borrowed from the State of Ohio flowed through Regency to John King and Rowland Boucher. Boucher and King used the monies to purchase an airplane, or planes, and leased these 707's to Braniff Airlines. King and Boucher are the beneficiaries of the contract with Braniff. Lawrence Harding, the president of Braniff, is a board member of King Resources.

Mr. Frederickson also stated that the IOS stock that was in the King and Covett Bahamian trusts was Cornfeld's personal stock. Cornfeld had pledged this stock at a bank and the bank was pressing Cornfeld for payment. Cornfeld could not make the payment and he did not want the stock to be sold to other people. Cornfeld contacted Covett who then had an IOS bank loan monies to the Covett and King Bahamian trusts, which trusts then used the monies to pay off Cornfeld's loan at the bank and the trusts then obtained Cornfeld's stock.

Mr. Frederickson stated that Consolidated Oil and Gas purchased interests in the Arctic properties from King Resources around the time that IOS purchased the properties and that Consolidated's purchase price enabled IOS to make a profit on the Arctic transactions since IOS had purchased the properties at a lesser price than Consolidated. Mr. Frederickson stated that there was a side deal to this whereby King Resources purchased a "bunch of moose pasture" from Consolidated. Mr. Frederickson stated that this land is located in the Bristol Bay area of Alaska. Mr. Frederickson further stated that this Bristol Bay transaction was written up as if it had occurred six months after the Arctic transaction but, in fact, it occurred at the same time. Mr. Frederickson stated that Harry Cooper of King Resources (in charge of King Resources' Western Division) looked into this Alaska, Bristol Bay land and found out that it was a bad deal as the acreage was very poor. According to Mr. Frederickson, Cooper complained about this transaction but he was told to keep his mouth shut.

The undersigned inquired if Mr. Frederickson had told Mr. Cooper about Mr. Frederickson's visits to this office. Mr. Frederickson stated that he had and that he believed that Mr. Cooper would furnish information to this office about the Bristol Bay transaction.

Attached to this memorandum of interview is the chart furnished by Mr. Frederickson.

John J. Kelly, Jr., Attorney

Attachment:
Copy of Chart

JJKelly/dn

cc:
Stanley Sporkin, T&M, w/attachment
Richard Rowe, Corp. Fin., w/attachment

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3525K

Denver Regional Office
February 22, 1971

MEMORANDUM OF INTERVIEW

PERSON INTERVIEWED: Dr. A. F. Frederickson
King Resources Offices
Security Life Building
Denver, Colorado

PERSONS CONDUCTING INTERVIEW: Joseph F. Krys, Assistant Regional Administrator

John J. Kelly, Attorney

DATE AND PLACE OF INTERVIEW: February 17, 1971
Denver Regional Office

SUBJECT: King Resources Company (D-1407)

Dr. Frederickson appeared at this office pursuant to prior telephone conversations with John Kelly of this office.

Dr. Frederickson stated that he has a doctorate in geology and is a senior vice president of King Resources Company. He said that he had been a personal friend of Rowland Boucher for many years, but that his primary interest was in keeping King Resources alive. He said that the recent course of events was not resolving the company's problems; that is, John M. King is still deeply involved, now more than ever, and on almost a daily basis. According to Frederickson, King on a recent Sunday removed from the company's warehouse some furniture valued at approximately $40,000. King took this furniture without approval. In addition, according to Frederickson, King has taken some calculators and other engineering equipment from King Resources without authority.

On numerous occasions Frederickson has requested that Boucher take some action, but, according to Frederickson, Boucher "just won't blow the whistle."

Frederickson further stated that King Resources Company sold an airplane to an individual, which airplane was in the possession of

[illegible]

Exhibit G

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John King, and John King has refused to give up the airplane. Dr. Frederickson stated that conflicts of interests are continuing on a daily basis. When asked to specify any particular conflicts of interests, he related the following. King Resources is drilling two wells in the Arctic in which the following are participants - Consolidated Oil and Gas, John King, Lake Shore Associates, John Mecom. Lake Shore Associates consists of Bennett King (no relation to John King) an officer and director of King Resources, and another man named Greenebaum (phonetic spelling). According to Frederickson, these men and entities are "riding the well." That is, they put up cash as a down-payment for their interests in the wells, but they have defaulted on the rest of the contract payments. Frederickson said that something should be done to enforce the contracts by either making these men or firms continue their payments or wiping out their interests in the wells. According to Frederickson, he has asked Boucher to take some action to enforce the contracts, but Boucher has not taken any action.

Frederickson stated that this Arctic deal, like most of John King's deals, follows a pattern where things look good in the contract, but the contracts are not the deal. When asked to specify how the deals differ from the contracts, Frederickson stated that John Mecom supposedly put up $275,000 as an initial payment on the Arctic properties, but the money came from John King, who got the money from the Colorado Corporation. Frederickson stated that he wondered if the same type of transaction took place with Lake Shore Associates. Frederickson stated that his point was that there was a whole series of intertwined deals; that Boucher is up to his neck in these deals and that they should be cleared up.

Frederickson stated that with Boucher in there running the company, the SEC could not get the details of these transactions. When asked as to what individual could furnish the details of these transactions, Dr. Frederickson listed the following individuals: Roger Davis, the comptroller of KR who, according to Frederickson, has been with the company for many years; Bennett King, John King and people at the Colorado Corporation. Dr. Frederickson stated further that because of the style in which King Resources operated, no one ever saw the details of any of the deals until after the deals were completed.

Dr. Frederickson stated that he heard that the SEC people were told that Boucher had to be kept in the company in order to negotiate with the Investor Overseas Services people (IOS). According to Frederickson the opposite is true, because IOS lost a lot of money in its dealings with King Resources.

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Dr. Frederickson stated that John King is primarily interested in making sales and that he is not concerned with the details of the sales as long as there is a profit in the transaction. King, according to Frederickson, doesn't seem t[illegible]are that somewhere along the line there has to be oil coming out of t[illegible]ground to make the deal pay. According to Frederickson, King has a certain style that he follows in his deals which is much like the deal with Mecom in the Arctic. John King furnishes money to the purchasers to buy part of the program from King Resources to establish a market price for the properties. Frederickson stated that Mecom went along with King because Mecom had a tremendous tax loss and as part of the deal, he did get some stock of the Colorado Corporation which at the time of the transaction was about to merge with King Resources. As a result, Mecom would have a large capital gain.

Frederickson stated that around December 26, 1969, IOS sent $5,000,000 to the Colorado Corporation which the Colorado Corporation used to purchase mineral properties. The Colorado Corporation then sold these properties to IOS at a considerable profit. Frederickson stated that all this was done within a few days so that the Colorado Corporation's earnings could be boosted for the year ending December 31, 1969. According to Frederickson the reason for boosting the earnings of the Colorado Corporation were as follows: At that time the Colorado Corporation was to merge with King Resources and the earnings of the Colorado Corporation was the factor to be used in determining the value of its stock in connection with its merger with King Resources.

In addition, on some occasions King would have Mecom or others buy part of the deal to establish a market price and in return Mr. King would offer Mecom and others side deals such as contracts to drill wells on the properties, which contracts would give these parties more money than they had to pay for their interest in the properties.

Dr. Frederickson was asked if he was aware of any transactions which King or King Resources had with the drilling funds in which this style of fixing a market price was used. Frederickson replied that he was not aware of any specific transactions, but he suggested that the SEC ask Roger Davis and other financial people of King Resources about these matters. Frederickson stated that a man by the name of Wes Yarbrough had quit King Resources because of a dispute about this type of activity. Dr. Frederickson stated that Yarbrough may now be in the Dallas area, and he would attempt to obtain Yarbrough's current address.

Frederickson stated that Bennett King and John King have currently loaned money to Rowland Boucher and that Boucher is "in bed" with them. Frederickson stated again that the reason that he came to the SEC was that he could not get the details from Boucher; for example, Frederickson stated

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that Boucher would not let him see the salary records. According to Dr. Frederickson the officers of the company had all agreed to take a one-third cut in salary. Recently certain people had come into his office and told him that an officer named Kayser had taken a one-third cut in pay, but he was getting the cut back by taking a bonus. When Frederickson went to look at the payroll records, he was told by the payroll people that Boucher had specifically instructed them not to turn over the records to Frederickson.

When asked who of the directors might be able to provide the SEC with information about these conflicts of interest details, Dr. Frederickson stated that Mr. Cooper knows a little about the Harry Truebiood deal (Consolidated Oil and Gas participation in the Arctic properties). Dr. Frederickson stated that Mr. Dixon knows a lot about the deals and has been with the company for many years. According to Frederickson, Dixon has consistently opposed John King in King's activities. Frederickson stated that if SEC people contact Mr. Cooper, they should ask him this question, "What is the value of your volcanoes?" According to Frederickson, Cooper will then be able to tell the SEC what he knows about the Arctic transactions. Frederickson stated that a great deal was paid for the properties, and there must have been some side deals.

Frederickson stated that he became a director of King Resources some time in the fall of 1970, and that at the directors meetings he has been consistently seeking details about the John King IOS transactions and the transactions with the trusts, but that to date he has not gotten all of the details. Frederickson further stated that he was present at the June last directors' meeting when John King did most of the talking about the IOS transactions, and that Byron Boone talked at the meeting and said that what John King said happened was not what actually happened, and that, according to Boone, it was John King's personal deal and not the company's.

Dr. Frederickson left some documents for us to review which are being retained in this office.

Joseph P. Krys
Assistant Regional Administrator

JPKrys/JJKelly/ms

John J. Kelly, Attorney

CCS; Stanley Sporkin - Theodore Levine, Division of Trading and Markets
Ernestine Repetti - Richard Rowe, Division of Corp. Fin

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3516 C

COOPER

Denver Regional Office
March 19, 1971

MEMORANDUM OF INTERVIEW

PERSON INTERVIEWED: C. Harrison Cooper
4236 South Eudora
Denver, Colorado

PERSONS CONDUCTING INTERVIEW: Joseph F. Keys, Assistant Regional Administrator

John F. Wassberg, Staff Accountant

DATE AND PLACE OF INTERVIEW: March 16, 1971
Denver Regional Office

OTHER PERSONS PRESENT: Lloyd Wade
King Resources Company

SUBJECT: King Resources Company (D-1407)

Mr. C. Harrison Cooper of King Resources Company (KR) appeared at the Denver Regional Office on the afternoon of March 16, 1971, pursuant to invitation, accompanied by Attorney Lloyd Wade. Mr. Cooper was warned that the Commission was investigating King Resources Company and that he was under no compulsion to answer questions or produce records; that any information which he furnished may be used against him and that he was free to consult with his counsel who was present.

He stated that he was presently a vice president and western division manager of KR and had been so employed since August of 1968, and was also presently a director of the company and had been a director since October 6, 1970. The western division consists of the Rocky Mountain states, Texas, California and Alaska, and his primary responsibility was oil exploration in this area. He indicated that he had been an oilman most of his adult life after receiving a Bachelor of Science degree in geology from the University of Oklahoma in 1933.

He also stated that in KR he reported directly to Rowland Boucher, the president of KR. He owns 100 shares of stock as well as a $5,000 debenture of KR.

Mr. Cooper was questioned about his knowledge of a KR purchase from Consolidated Oil & Gas of an interest in some properties located in the Bristol Bay area of Alaska. He stated that this property was first offered by Consolidated to KR in October 1969 at a price of $25 per acre, but the

- ☐ Request search on person(s) named on attached Form SEC 555.
- ☐ Request input on person(s) named on attached Form SEC 561A.
- ☐ All or other pertinent persons have been searched.
- ☐ All or other pertinent persons have been input.
- ☑ Search or input unnecessary as to all or other persons.

Exhibit H

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offer was turned down primarily because the company was not interested in this type of acreage at that time. He indicated that he thought the price was a little high since he was already generally familiar with the area from his previous employment in the oil business.

Mr. Cooper produced two reports which had been furnished him at the time he considered the October 1969 offer of Consolidated concerning the area. (All documents referred to herein were exhibited by Mr. Cooper at the time of the interview. Mr. Wada promised to make copies and to produce them on the following day. The copies so produced and the seismic line transmitted by Mr. Wada's letter of March 17, 1971 are marked as exhibits to the original of this memorandum.) These were a report dated June 1, 1969 prepared by Intermountain Exploration and marked as Exhibit A and another report dated June 25, 1969 prepared by Consolidated Oil and Gas and marked as Exhibit B. It was his recollection that a memo had been prepared by one of his staff at this time concerning the property, but he doubted that such a memo was still available. In any event, Mr. Cooper produced a letter dated October 7, 1969, a copy of which is attached as Exhibit C sent to Consolidated indicating KR's non-interest in the acreage. Attached to the letter is an internal note.

In January or February 1970, the same property was again offered to KR and he was asked to investigate and give his opinion on the matter. At this time, he again was furnished the two reports previously mentioned, as well as a seismograph study of the off-shore area nearby. At this time, KR decided to purchase as the seismograph study indicated the formations in the area were sufficiently thick as to warrant exploration. In addition, Pan American was in the process of drilling a well in the general area and was rumored to be planning a second test well. Also, the offering price to KR had been lowered. The acreage was offered at $5.00 per acre for applications and $15.00 per acre for leases. Cooper said that applications on Alaskan land were questionable because the State of Alaska was entitled to select acreage. It might or might not select acreage under a particular application. If the state selected the acreage, the application was no good. If the state passed up the acreage, the application entitled to priority would be valid.

Cooper indicated that Boucher had asked him to look into the matter and that a Mr. Johnson, then a member of his staff, but since deceased, had made inquiries and discovered that the area was quite attractive to oil men, and that the offering price was in line with other leases being sold in the area. Mr. Cooper could not furnish documentation of prices for comparable acreage; neither he nor Johnson had documented prices of comparable acreage.

Mr. Cooper also said that the acreage offered was not known to be on structure and the price comparison was with acreage not known to be on structures. He stated that he, Cooper, gave a favorable report to Boucher

to the effect that the prices in the proposed contract were in line and if they had the money and wanted to spend it in this area, the offer was worthy of consideration, although the logistics of the area are very difficult since it is very swampy.

Mr. Cooper admitted that the property has since been shown to have little value since Pan American brought in two dry holes in the vicinity, but he insisted that it was a proper "wildcat play" at the time the deal was made.

He denied that the transaction was part of a package deal with Consolidated Oil and Gas or that there were any related transactions made either before or after this purchase in February 1970. He said that if we had contrary information, he was unaware of it. He further denied that the transaction was back dated. He made his second study and recommendation in January or February, 1970.

A copy of the contract which is dated February 25, 1970, is attached as Exhibit D.

A copy of the seismic study and transmittal letter is attached as Exhibit E. Mr. Cooper said he saw the seismic study before he got it for his files.

A copy of the note which KR gave Consolidated is attached as Exhibit F, and an internal memo is attached as Exhibit G.

Joseph P. Krys
Assistant Regional Administrator

John F. Wassberg
Staff Accountant

ccs:
Stanley Sporkin,
Division of Trading and Markets
Richard Rous
Division of Corporate Finance

JPKrys/JFWassberg/dt

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CIVIL SUITS

1. SEC v. Crofters, District of Colorado
2. FOF v. King, Southern District of New York
3. Ohio v. Crofters, District of Colorado
4. Bottger v. King, et al., District of Colorado
5. Baer v. Franklin, District of Colorado
6. In the Matter of John McCandish King, Bankrupt, District of Colorado
7. In the Matter of John McCandish King, Debtor-Appellee v. United States of America, Tenth Circuit Court of Appeals

   In the Matter of John McCandish King, Debtor-Appellant v. United States of America, Tenth Circuit Court of Appeals
8. Central National Bank of Cleveland v. Carylyn Becker King, Trustee, et al., District of Colorado
9. John M. King, Debtor, by David C. Knowlton, Special Counsel v. Regency Investors Corporation, District of Colorado, County of Denver
10. John M. King and The Colorado Corporation v. Robert L. Vesco, Anthony M. Pilaro, International Controls Corporation, Investors Overseas Services, Ltd., and Hale Bros. Association, Inc., Northern District of California
11. William D. Neary, Trustee for the Trade Creditors of King Resources Company v. I.O.S. Ltd., et al., District of New Jersey
12. Securities and Exchange Commission v. King Resources Company, A. Rowland Boucher and Timothy Lowry, District of Colorado
13. In the Matter of the Trusts of a Settlement dated the 27th day of June A.D. 1968 and Made Between John M. King as Settlor and Mercantile Bank and Trust Company Ltd. (as Trustee) and In the Matter of the Trustee Act Between Mercantile Bank and Trust Company Ltd., Plaintiff and John M. King, First Defendant, and Richard P. Matsch (as John M. King's Referee in Bankruptcy), Second Defendant, and Carylyn B. King, Third Defendant, and Richard P. Matsch (as Carylyn B. King's Referee in Bankruptcy), Fourth Defendant, Supreme Court of Commonwealth of Bahama Islands
14. American Employers' Insurance Company, Plaintiff v. King Resources Company, et al., Defendants, District of Colorado
15. The Dietrich Corporation, et al. v. King Resources Company et al., District of Colorado; Gross, et al. v. Blyth & Co., Inc., et al., District of Colorado; Marrell, et al. v. John M. King, et al., District of Colorado

Exhibit I

16. In the Matter of King Resources Company, Debtor, In Proceedings for Reorganization of a Corporation, District of Colorado

17. In the Matter of Imperial American Resources Fund, Inc., Debtor, In Proceedings for Reorganization of a Corporation, District of Colorado

18. In the Matter of The Colorado Corporation, Bankrupt, District of Colorado

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO - IN BANKRUPTCY

In the Matter of	)	
	)	IN PROCEEDINGS FOR
KING RESOURCES COMPANY and	)	REORGANIZATION OF
INTERNATIONAL RESOURCES LIMITED	)	CORPORATIONS
	)	
	)	No. 71 B 2921
Debtors	)	72 B 644

NOTICE OF TRUSTEE'S SEC. 167 REPORT, OF TIME FOR SUBMITTING SUGGESTIONS FOR PLAN UNDER SEC. 167 (6), OF TIME FOR FILING PLAN BY TRUSTEE AND OF HEARING ON APPROVAL

To the creditors, stockholders, indenture trustees and all other parties in interest

Pursuant to orders of Court, Charles A. Baer as Trustee of the above named debtor corporations submits these notices:

SECTION 167 REPORT:

Attached hereto is a verbatim copy of the report which the Trustee filed with the Court on October 1, 1973, setting forth a statement of the Trustee's investigation of the property, liabilities, and financial condition of the debtor companies, the operation of their businesses and the desirability of the continuance thereof, all as required by Sec. 167 of the Bankruptcy Act.

TIME FOR SUBMISSIONS OF SUGGESTIONS FOR PLAN OF REORGANIZATION

You may submit to me on or before November 1, 1973, suggestions for the formulation of a plan of reorganization of the above named debtors, or proposals in the form of plans for reorganization of them. If mailed, such suggestions or proposals should be addressed to Charles A. Baer, 1804 Security Life Building, Denver, Colorado, 80202 and if delivered physically, they may be left at Room 1804, Security Life Building, Denver, Colorado.

TIME WITHIN WHICH TRUSTEE SHALL FILE PLAN OR REPORT

The Court has set November 12, 1973 as the time by which the Trustee shall file his plan or plans of reorganization or a report of his reasons why a plan cannot be effected for either or both of the debtor corporations.

HEARING ON APPROVAL OF PLAN OR PLANS OF REORGANIZATION

A hearing on such plan or plans or reports and for the consideration of any objections which may be made or of such amendments or plans as may be proposed by the debtor or by any creditor or stockholder will be held in Courtroom E, United States Courthouse, 1929 Stout Street, Denver, Colorado on December 3, 1973 at 9:00 A. M.

SOLVENCY HEARING

Notice is also given that at the same time and place, the Court will hear the question of solvency of the debtor corporations to determine if stockholders may submit a plan under Sec. 170 of the Bankruptcy Act and to determine whether acceptance of stockholders is required under Sec. 179 of such Act and whether the plan must provide for protection of stockholders under Sec. 216(8) of that Act.

This notice is dated: October 10, 1973

CHARLES A. BAER
Trustee

Exhibit J

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

IN THE MATTER OF	)	IN PROCEEDINGS FOR
	)	REORGANIZATION OF
KING RESOURCES COMPANY and	)	CORPORATIONS
	)	
INTERNATIONAL RESOURCES	)	NO'S: 71-B-2921
LIMITED,	)	and
	)	72-B-644
Debtors.	)	

SECTION 167 (5) AND SUMMARY OF SECTION 167 (3)
REPORT OF THE DEBTORS

COMES NOW Charles A. Baer, Trustee, and submits the following report:

1. INTRODUCTORY REMARKS

The Reorganization Court by its Order of September 21, 1973, directed the Trustee to file with the Court on or before October 1, 1973, his report pursuant to Section 167(5) of the Bankruptcy Act and a summary of his findings made pursuant to Section 167(3); to print the Trustee's report and finding and mail a copy thereof to all creditors, debenture holders and stockholders on or before October 10, 1973 together with a notice pursuant to Section 167(6) of the Bankruptcy Act to said persons that they may submit to him suggestions for the formulation of a plan, or proposals in the form of plans, on or before November 1, 1973; that the Trustee shall file a plan of reorganization with the Court on or before November 12, 1973 and scheduled hearing on the plan will commence December 3, 1973 at 9 a.m.

Sections 167(1), (3) and (5) of the Bankruptcy Act provide as follows:

> SEC. 167. The trustee upon his appointment and qualification--
> (1) shall, if the judge shall so direct, forthwith investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and report thereon to the judge;
> (3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate;
> (5) shall, at the earliest date practicable, prepare and submit a brief statement of his investigation of the property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, in such form and manner as the judge may direct, to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate;

Since August of 1971 when this proceeding was commenced, this Trustee and his predecessor, Kiel Boone, have spent the major portion of their time, with the limited cash available, maintaining and protecting the assets of the Debtor, ascertaining the liabilities of the Debtor and attempting to establish a positive

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cash flow in the Debtor. Some questions as to the assets and liabilities of the Debtor have not been resolved, the major two of which are: (1) the controversy between the Debtor and Global Natural Resources Properties, Limited (Global), the purported successor to the Natural Resource assets of Fund of Funds, an I.O.S., Ltd. (IOS) mutual fund, and (2) the claims of investors who assert in class actions and otherwise, violations of securities laws by the Debtor and its former officers and directors. A positive cash flow has not been achieved because of the pendency of the Internal Revenue Service jeopardy assessment liens on all of the producing properties of the Debtor and because of the present percentage dedication of cash derived from production which is currently being paid to Continental Illinois National Bank, Marth Oil Company and Evanston Charitable Association in accordance with the terms of certain production payment agreements. The Trustee has attempted to settle the income tax liability and provide specific security to the government for its claimed interest equalization tax and has attempted to negotiate a restructuring of the production payments. Negotiations are continuing in an effort to resolve the disputes of the Debtors with Global and with the investors. The Trustee believes that progress is being made towards resolution of these major problems.

The within report and scheduled filings and hearing undoubtedly will be considered premature by some and long overdue by others. They are premature in that the assets of the Debtor are not fully protected and completely valued; the liabilities of the Debtor have not become fixed and a positive cash flow has not been achieved so that the business of the Debtor can be continued without fear of loss of properties by failing to perform work commitments, by forfeiture or otherwise.

This report is long overdue in that an oil and gas company which uses its reserves to survive without developing new and additional reserves is depleting its assets daily.

It was the hope of this Trustee that the problems of the Debtor with Global and the claims of investors against the Debtor and its former officers and directors would be resolved by this date, that a positive cash flow would be achieved and that the Trustee with the aid and assistance of independent accounting personnel, would be able to report his findings more definitively. Time and the lack of funds do not permit such a report.

The following are the reports of the Trustee pursuant to Section 167(3) and (5) for both King Resources Company and International Resources Limited. King Resources Company will be referred to as the Debtor and International Resources Limited as "IRL". IRL is a wholly owned subsidiary of the Debtor and was incorporated under the laws of the United Kingdom.

2. THE HISTORY AND BUSINESS OF THE DEBTOR

a. Background

The Debtor is the successor to a business commenced by John M. King and another in 1955 which business was incorporated and later became known as KSOC, Inc. The Debtor, itself, began business operations as King-Stevenson Oil & Gas Company, a Nevada corporation, on January 1, 1961, the effective date of an exchange of common stock of the Debtor for the oil and gas properties of individuals who had purchased resource interests from its predecessor, KSOC, Inc. and the business and major assets of KSOC, Inc. It changed its name to King Resources Company in 1965 and changed its state of incorporation to Maine in 1967. During its first two years of operations the Debtor was primarily engaged in oil and gas drilling and production business. Thereafter

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its business, percentage wise, changed to the sale of resource interests and related services. Revenues derived from oil and gas production accounted for 45% of total income in 1964, 35% in 1965, 28% in 1966, 14% in 1967 and 5% in 1968 and 1969. The total revenues gained from oil and gas production from 1967 through 1969 were approximately $9,400,000. Revenues resulting from sales of resource interests and related services accounted for 35% of income in 1964, 50% in 1965, 62% in 1966, 83% in 1967, 95% in 1968 and 1969. The total revenues gained as reflected in the books of the Debtor from sales of resource interests and related services for 1967 through 1969 were $170,000,000.

The Debtor employed a total of 110 persons in 1967, 303 in 1968, 649 in 1969 and 776 as of June 30, 1970. The payroll of the Debtor for 1970 exclusive of fringe benefits was projected to be in excess of $8,000,000.

b. The Colorado Corporation and Subsidiaries

In 1966 John M. King entered into the business of vending resource prospects by selling interests in limited partnerships. The minutes of the meeting of the Board of Directors reflect that he first tendered the business to the Debtor and the Debtor refused. Thereafter, he began building what later became known as The Colorado Corporation. The Colorado Corporation is beneficially owned by John M. King and his family. It is primarily a holding company having the following wholly-owned subsidiaries: Imperial-American Management Company, Royal Resources Corporation, Regency Management Company, The Denver Corporation and General American Development Corporation. Imperial-American Management Company and Royal Resources Corporation were engaged in the business of managing oil and gas drilling programs for others. Their wholly-owned subsidiaries, Imperial-American Resources Fund, Inc. and Royal Resources Exploration, Inc., offered to the public Investment Plans the proceeds of which were invested in the acquisition and development of interests in oil, gas and other mineral properties. The Denver Corporation, a member of the National Association of Securities Dealers, Inc., was engaged in the securities business, principally as distributor of such Investment Plans. Regency Management Company and its wholly-owned subsidiaries, Regency Investors, Inc. and Regency Income Corporation, were engaged in the equipment leasing business. General American Development Corporation was principally engaged in the development of recreational communities.

The Debtor, with the approval of the Board of Directors of the Debtor, advanced all capital necessary for The Colorado Corporation and its subsidiaries to begin business. The disclosure of Mr. King's conflicts of interest and possible conflicts of interest as it might exist between the business of the Debtor and that of The Colorado Corporation was revealed. The advances of needed capital by the Debtor to The Colorado Corporation was presented to the stockholders at annual meetings and approved.

On October 16, 1969, the respective Boards of Directors of the Debtor and The Colorado Corporation agreed in principle to a merger of The Colorado Corporation into the Debtor.

In 1968 the Debtor offered two debenture issues, one to the investing public in the United States (domestic debentures) in the total amount of $25,000,000 and one through a subsidiary corporation to the investing public outside the United States (foreign debentures) in the total amount of $15,000,000. Both issues were subordinate to certain existing and future senior indebtedness as therein defined and called for periodic interest payments. The Prospectus of each issue warned the investing public that the Debtor's primary business was the sale of resource

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interests and related services and that a substantial portion of the business was with companies beneficially owned by John M. King; that is, Imperial-American Management Company (Imperial-American) and Royal Resources Corporation (Royal). These documents further provided:

> "It is expected that such transactions between the Company /Debtor/ and Imperial-American and Royal will continue in the future. However, funds available for purchases by those companies will depend upon the sums invested by the public in oil and gas drilling programs managed by them. It is impossible to predict the amount of such investments in any future period, as this will depend upon the results of existing drilling programs, economic conditions at that time, and other factors. A future decline in funds available to Imperial-American and Royal for purchases from the Company or a substantial decrease in future purchases by them from the Company or changes in the prices or terms of such purchases could adversely affect the Company's gross revenues. Moreover, there are no assurances that Imperial-American or Royal will make purchases from the Company in any particular amounts or on any specific terms in the future, although funds may be available to them for the purchase of leases, geologic studies, drilling arrangements and mineral interests."

c. IOS-Business Arrangement-Loan to King Trusts, Sale of Arctic Permits and Valuation of Fund of Funds Assets

In early 1968 I.O.S., Ltd. (IOS), the manager of certain offshore mutual funds, began purchasing resource interests and related services from the Debtor for one of its open ended mutual funds, Fund of Funds. In 1969 Fund of Funds became the largest purchaser of such interests from the Debtor. During 1969 62% of the Debtor's gross revenues from the sale of natural resource interests and related services (approximately $68,000,000) were derived from sales to I.O.S. entities and to The Colorado Corporation and its subsidiaries, Imperial-American and Royal.

In the fall of 1969 the stock of I.O.S. was offered to the public. Mr. John M. King and Mr. Edward Cowett, then president of I.O.S., had previously established Trusts under the laws of the Bahamas (hereafter called "King Trusts" and "Cowett Trust") for the benefit of their children. One of the Trustees of the King Trust was the Mercantile Bank and Trust Company, Limited, (Mercantile) located in Freeport, Bahamas. By use of proceeds borrowed from banks controlled by I.O.S., these Trusts purchased both preferred and common stock, of I.O.S. The outstanding balances of said loans were approximately $10,000,000 as of May 4, 1970.

The arrangement between the Debtor and I.O.S., was that I.O.S. would purchase for the account of Fund of Funds (actually a sub-account of a subsidiary of Fund of Funds, the full name of which was F.O.F. Proprietary Fund, Natural Resource Fund Account), an undivided interest in resource prospects at the then fair market value thereof and agreed to pay for related services for the development of such prospects generally on a turnkey basis. Since the interests in resource prospects of investors of Imperial-American and Royal were subject to a 25% net operating profits interest, the Debtor believed that the interests of the investors in the Fund of Funds should be charged with a like net operating profits interest. The 25% net operating profits interest was to be split between the Debtor and I.O.S.; that is, 12-1/2% in the Debtor and 12-1/2% in I.O.S. The arrangement further contemplated

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that the Debtor would always retain a substantial interest in the prospect; that the Debtor would make a profit on the sale of the prospects and that the charge for related services, although turnkey in nature, would be reasonable. Under this arrangement many prospects were vended to Fund of Funds including an undivided 50% interest in the Canadian Arctic Oil and Gas Permits. With the exception of some written agreements concerning the Canadian Arctic Oil and Gas Permits, there is little or no documentation of the transactions other than accounting records.

The Denver Corporation, a subsidiary of The Colorado Corporation, claims 25% of the Debtor's 12-1/2% net operating profits interest on the resource interests vended to the Fund of Funds asserting that it represents a part of its commission for obtaining I.O.S. as a customer.

The concept of an open-end mutual fund -- that is, the purchase and redemption of certificates at the then value of the funds assets -- required a periodic valuation of said assets. The Canadian Arctic Oil and Gas Permits were initially valued by Fund of Funds at cost of approximately $11,850,000 and later, on the basis of an appraisal, at $18,000,000.

The accountants of Fund of Funds and I.O.S., Arthur Andersen & Co (who were also the accountants of the Debtor), advised that if an arm's length sale of a substantial interest in a resource prospect were consummated with a responsible person, the sale could be used as the basis for valuing the asset. The accountants advised that such sale should encompass at least 10% of the asset.

To value the Canadian Arctic Oil and Gas Permits, Fund of Funds, through subsidiary corporations, gave the Debtor written authorization to negotiate a sale of an undivided one-eighth of its interest in said permits (a net of 6.25% of the total interest of both the Debtor and Fund of Funds) for the equivalent of $15 an acre. The net acreage in the permits held by the Debtor for itself and Fund of Funds was approximately 22,264,495 acres. The cost to Fund of Funds for its undivided 50% interest therein subject to a 12-1/2% net operating profits interest was slightly in excess of $2 per acre.

The Debtor negotiated with Consolidated Oil and Gas Company ("Consolidated") for a sale of an undivided 1/32nd interest or a 3.125% interest in the permits which interest would be approximately 695,766 net acres. This agreement called for a payment of the "Purchase Price" of $5,218,242.00 in installments and an obligation to pay 25% (instead of 3.125%) of the cost of exploration required to earn the entire acreage until Consolidated had paid $5,218,242.00. Thereafter, Consolidated would be responsible for only 3.125% of such costs. The $10,436,484 (the total of the two figures if divided by the acreage acquired by Consolidated result in the sale on an acreage basis of $15 per acre.

Comparable agreements were entered into with John W. Mecom (Mecom) covering an undivided 1/64th interest or 1.5625% interest and with John M. King for an undivided 1/64th interest or 1.5625% interest. Your Trustee questions the bona fides of the transaction with Mecom, as the evidence tends to establish that he entered into the transaction as an accommodation to John M. King or one of his corporations.

To accomplish the valuation of the assets in Fund of Funds in the calendar year of 1969, the I.O.S. desired sale had to take place in 1969. The accountants of I.O.S. and Fund of Funds expressed concern of adverse tax consequences to Fund of Funds if its interest were sold in 1969. The accountants suggested that the sales be made by the Debtor in 1969, and then in 1970 the Debtor could purchase like interests from Fund of Funds on the same terms and conditions and even substitute the considerations

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flowing from the purchasers to the Debtor in place of like premises from the Debtor.

Since it had been the policy of the Debtor to offer resource interests to officers and directors of the Debtor on the same basis that like sales were being made to third persons, a limited partnership called Lakeshore Associates of which John M. King and Bennett King (they are not related, but were both officers and directors of the Company) made request to purchase an undivided 1/128th interest or .781251 interest in said permits on the same terms. The four sales of working interests was 7.031251 of the whole.

Agreements of purchase and sale covering the 7.031251 interest were prepared and executed by the Debtor and the purchasers, all of which agreements are dated late in December of 1969. Apparently Fund of Funds then elected to sell only a 5% interest instead of a 6.25% interest. Agreements of purchase and sale covering the 5% interest were executed by the Debtor and the subsidiary corporations of Fund of Funds. The agreements are dated January 2, 1970. The difference between the purchase price in the agreements between the Debtor and Fund of Funds and the agreements between the Debtor and the other purchasers for a like percentage interest was approximately $1,956,825. This represented the dollar amount attributed to the 12-1/2% net operating profits interest which the Debtor claimed on the interest sold by Fund of Funds. The considerations flowing from the purchasers of the Debtor were later tendered to Fund of Funds in satisfaction of its obligation under the January 2, 1970 agreements but were refused, again because of the concern of adverse tax consequences.

Based upon these agreements to sell, the interest of Fund of Funds in the Canadian Arctic was valued by ascribing $15 per net permit acre less an amount to cover the 12-1/2% net operating profits interest in the Debtor with the resulting figure being discounted by 10%. The value ascribed was approximately $119,000,000. Other assets of Fund of Funds were valued, and the net result was that the enhanced value of the assets in Fund of Funds was approximately $97,370,000 for the year 1969. The fee of I.O.S. for managing Fund of Funds was 10% of the enhanced value of the assets. Accordingly, it received a fee of $9,737,000 from Fund of Funds. The Debtor was of the opinion that I.O.S. had retained for itself a 12-1/2% net operating profits interest in the asset rather than a 10% commission based upon the enhanced value of the asset. The announcement by I.O.S. of the fee states it is based upon a 9.375% interest sold rather than a 7.03125%. The difference is 3/128ths.

In the footnotes to the financial statements of the Debtor, which are contained in the prospectuses of the Debtor, is the following statement:

> "The Company follows the accounting practice of reporting profits from deferred payment sales of resource interests in the year contracted unless, in the opinion of management, significant contingencies exist with respect to the completion of such contracts, in which case profits from such sales are reported in the period in which the contract economic commitments are fulfilled."

In 1969, the Debtor reported as revenues from sales the total amount it would have received by reason of the agreements with Consolidated, Mecom, John M. King and Lakeshore Associates, that is $11,741,043.33 and profit of $4,282,372.36.

In 1969 it received but 10% thereof. Mecom, John M. King and Lakeshore Associates made no other payments. The Debtor

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upon his agreement. Consolidated made its payment until it brought an action claiming breach of the agreement. The Debtor made the initial payments on its agreement with Fund of Funds, and attempted to fulfill the work commitment. The Denver Corporation was paid 25% of the amount allocated to the net operations profits interest on the 5% sold by Fund of Funds.

d. Sale of Net Operating Profits Interests

In January, 1969, the Colorado Corporation entered into written agreements with Investors Overseas Bank Limited of Nassau, Bahamas, an I.O.S. bank, John M. King and individuals connected with I.O.S. for the Sale of Net Operating Profits' Interests in Oil and Gas Leases, which agreements called for the sale by The Colorado Corporation to the bank and the individual of net operating profits interests acquired by Imperial-American, Royal and the Debtor in properties vended to purchasers of resource interests, including Fund of Funds. The total purchase price for the interests was in excess of $20,000,000, with a 25% down payment and the balance in four equal annual installments. During the latter part of 1969 the Debtor tendered to The Colorado Corporation net operating profits interests which it had on properties vended to the Fund of Funds for a total purchase price of $3,752,426,, payable 25% on or before December 31, 1969 and the balance in four equal annual payments. The Colorado Corporation made the payment on December 31, 1969, but has made no other payment. Pursuant to the accounting policy followed by the Company $3,752,426 was reported as a profit on this transaction for the year 1969.

e. IOS Take-Over-Payment of King Trust Loans to IOS Bank And The DeLaCam Transaction

In late 1969 and early 1970, the investing public throughout the world ceased purchasing mutual fund certificates offered for sale by I.O.S. and began requesting that certificates purchased be redeemed. Investors in the drilling programs of Imperial-American and Royal also ceased participating in new programs.

The business decline of I.O.S. in face of the announced performance of Fund of Funds and I.O.S. based upon the valuation of the Canadian Arctic Oil and Gas Permits, caused internal friction within I.O.S. The Board of Directors of I.O.S. believed that their present management, headed by Mr. Bernard Cornfeld, should be replaced by a group which could cause the trend of the business to be turned around so that the public would cease requesting redemptions and resume investing in its various funds. One group of the Board believed that I.O.S. should be turned over to various banking institutions of Europe who would install conservative procedures within the organization, which in turn would instill faith and confidence in the organization by the investing public. Another group believed that it was the sales force of I.O.S. who needed the encouragement and direction so that a turn around could be immediately accomplished. Apparently many of the salesmen had purchased stock in I.O.S. by use of borrowed funds and had purchased certificates in mutual funds by use of earned commissions. Many of the redemptions were being requested by salesmen. The group espousing the former view sought out European banks, and the group suggesting the latter course of action contacted John M. King.

Some time prior to April 25, 1970, Mr. Cowett informed John M. King that the Board of Directors of I.O.S. invited Mr. King to lead a consortium of institutions, including the Debtor, to take control of I.O.S. by providing it with financing, technical management assistance and to restore the confidence and enthusiasm of the sales staff. Mr. Cowett further advised Mr. King that the Board of Directors would not entertain an offer on behalf

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of Mr. King so long as the outstanding loans of the King Trusts with I.O.S. banks remained unpaid.

Mr. Cowett met with representatives of Delafield Capital Corporation (Delacap) an affiliate of Delafield and Delafield, then a member of the New York Stock Exchange on Friday, April 25, 1970 in New York City. Delacap was retained to assist in arranging for the refinancing of the loans of the King Trusts, in raising funds for proposed financing to be offered to I.O.S., and in attempting to interest institutions in joining the consortium to be led by John M. King. The immediate problem faced by Delacap was arranging for the refinancing of the loans of the King Trusts. Mr. King and representatives of Delacap made an attempt through a large commercial bank to refinance the loans, by offering as security, the I.O.S. stock held by the King Trust, stock in The Colorado Corporation held by certain domestic trusts for the benefit of the King children (Domestic Trusts) and shares of the Debtor owned by John M. King. Either the bank was not receptive to the suggested loan or the loan could not be consummated prior to May 4, 1970.

On May 3, 1970, the following letter agreement was entered into between Delacap, John M. King, Edward M. Cowett, the King Trust, the Domestic Trust and Mercantile as trustee of the King Trust, and individually. Mr. Timothy G. Lowry signed as attorney in fact for John M. King, the King Trust and the Domestic Trust.

May 3, 1970

Delafield Capital Corporation
140 Broadway
New York, New York 10005

Re: $10,000,000 Loan to Mercantile Bank and Trust Company Limited, as Trustee for the John M. King Trust

Gentlemen:

This will confirm our agreement with respect to your lending $10,000,000 to the abovementioned trust upon the following terms and conditions:

a) John M. King has agreed to furnish to you (or cause others to furnish to you) $5,000,000 (U.S.) on or before 12:00 Noon, May 4, 1970;

b) Mercantile Bank and Trust Company Limited of Freeport, Bahamas has agreed to lend to John M. King $1,000,000 (U.S.) on or before 12:00 Noon, May 4, 1970;

c) Edward M. Cowett has agreed to furnish to you the sum of $2,000,000 (U.S.) on or before 12:00 Noon, May 4, 1970; and

d) All of the foregoing shall serve as cash collateral for the loan. Subject to receipt by you of the foregoing $8,000,000 and certain other collateral hereinafter set forth, you have agreed to lend to John M. King and to make available for his account the sum of $2,000,000(U.S.) in order that a total sum of $10,000,000 will be available for the loan.

You shall make said $10,000,000 (U.S.) available to the Overseas Development Bank, Geneva, Switzerland in accordance with the instructions and for the account of the above trust.

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To secure the repayment of said $10,000,000, there shall be deposited with you as further collateral the following securities:

A. By the above Trust:

292,000 shares of common stock of I.O.S. Ltd.
27,090 shares of common stock of I.O.S. Management Ltd.
396,000 shares of preferred stock of I.O.S. Ltd.

Notes for $7,000,000 and $2,000,000 and

$1,000,000 due on demand after 10 days from the date of the loan.

B. By Trusts for the benefit of John M. King IV, Carylyn Ann King, Mark M. King and Sally Ann King:

2,750,000 shares of common stock of Colorado Corporation

C. By John M. King:

286,000 shares of the common stock of King Resources Company

together with an undertaking from King Resources Company to cause the same to be registered with the SEC as promptly as possible by King Resources Company at its sole cost and expense, and a "put" granting to you the right to "put" to John M. King, said shares of The Colorado Corporation for $10,000,000 guaranteed by The Colorado Corporation.

D. By the Covett Family Trust and Edward M. Covett:

375,000 shares of common stock of I.O.S. Ltd.

In the event that I.O.S. Ltd. fails to execute a satisfactory agreement with John M. King to grant him, his nominee or Harding L. Lawrence control of I.O.S. Ltd. by May 14, 1970, then:

(a) You may apply any or all said collateral in payment of said $2,000,000 note to reimburse you for your said advance to John M. King unless the same is paid on demand.

(b) After you have been reimbursed for said $2,000,000, plus interest, fees and costs, then said 286,000 shares of King Resources Company shall be returned to John M. King and the Mercantile Bank and Trust Company Limited shall have the right to apply any or all of the remainder of said collateral to satisfy its claim for $1,000,000 advanced by it plus interest, fees and costs, unless its note from John M. King is paid on demand.

(c) After (a) and (b) have been satisfied then balance of the collateral shall be turned over to the then noteholders.

In consideration for your services in connection with the hereinabove described $10,000,000 loan, you shall at the time said loan is advanced, be paid a cash fee of $40,000.00. You shall also be reimbursed all costs incurred in conjunction herewith including interest and funding costs incurred by you over and above the interest rates specified below.

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The John M. King Trust hereby agrees to pay you interest on the $10,000,000 at the rate of 11% (eleven percent) per annum on the outstanding balance of said loan. Interest shall be payable 10 days from the date of the loan and monthly thereafter on any portion of the loan still outstanding.

In addition, with reference to the $2,000,000 to be loaned by you to John M. King, John M. King hereby agrees to pay you interest at the rate of 12.5% (twelve and one-half percent) per annum (1-1/2% in addition to the 11% received from the John M. King Trust). Said interest shall be payable 10 days from the date of the loan and monthly thereafter on any portion of said $2,000,000 loan still outstanding.

In the event that I.O.S. Ltd. executes a satisfactory agreement by May 14, 1970 granting John M. King, his nominee or Harding L. Lawrence control of I.O.S. Ltd. then you have agreed to use your best efforts:

(i) to refinance said $10,000,000 loan on a six months basis;

(ii) to obtain loans and lines of credit for I.O.S. Ltd. in an amount up to $45,000,000.

It is agreed that in the event you undertake to arrange such financing, you and the parties in interest shall agree upon your compensation in connection therewith.

Very truly yours,

JOHN M. KING
By /s/ Timothy G. Lowry, as attorney-in-fact

EDWARD M. COWETT
By /s/ Joel Mallin, as attorney-in-fact

MERCANTILE BANK AND TRUST COMPANY LIMITED
as Trustee for the John M. King Trust
By /s/ R. G. Winfield

MERCANTILE BANK AND TRUST COMPANY LIMITED
By /s/ R. G. Winfield

Trusts for the benefit of John M. King, IV
Carylyn Ann King, Mark M. King and Sally
Ann King
By /s/ Timothy G. Lowry Trustee

Agreed and Accepted:
DELAFIELD CAPITAL CORPORATION
By /s/ Jay Frankel

On May 4, 1970, the Debtor received $2,000,000 from Robert Galvin, a former Director of the Debtor, $1,000,000 from First National Bank, Tulsa, Oklahoma and $2,000,000 from John M. King via banks - $1,100,000 from Central Bank of Cleveland, $450,000 from Commonwealth Bank of Detroit and $450,000 from the LaSalle National Bank, Chicago, Illinois. On that same date, the Debtor transferred by wire $5,000,000 to the First National City Bank, New York City, New York, for the credit and advice of "Delafield and Delafield Special Account for the Benefit of Delafield Capital Corp." Mercantile Bank and Trust Company loaned $1,000,000 to John M. King; Mr. Cowett transferred only $400,000 to Delacap. Mr. King verbally assured Delacap that the $1,600,000 would be forthcoming and the records reflected that Delacap borrowed $1,600,000 from the Debtor for one day.

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On May 4, 1970, Mr. Cowett went to Geneva with a check made payable to an I.O.S. bank in the amount of $10,000,000, drawn on the account of Delacap.

The records reflect that on May 5, 1970, the following I.O.S. banks were paid through the Bank of New York, New York City, New York, the following amounts:

1.	Investors Overseas Bank Ltd. (King Childrens' Trust)	$6,428,146.87
2.	Investors Overseas Bank Limited (Cowett Childrens' Trust)	2,944,571.29
3.	Investors Bank, Luxembourg S.A. (King Childrens' Trust)	462,447.45
4.	Overseas Development Bank (John M. King)	164,834.39
		$10,000,000.00

The $40,000 fee called for in the letter agreement was paid by a check drawn on the Debtor's account. The interest payment on the $10,000,000 note of Mercantile to Delacap in the amount of $45,111.10 was paid by John M. King on May 20, 1970.

Insofar as your Trustee has been able to determine, no officer or director of the Debtor recalls any discussion with Mr. King regarding the method by which the I.O.S. bank loans to the Trusts would be paid, with the exception of Mr. Lowry.

In connection with the attempted take-over of I.O.S., Mr. Cowett and Mr. King worked out the parameters within which each believed that the other could proceed. There is a writing dated April 29, 1970, on the stationery of John M. King which sets forth his basic offer to I.O.S. It generally provided that John M. King and a consortium of institutions, two of which were to be banks, insurance companies or investment banking houses, would cause a three-year $20,000,000 loan to be made to I.O.S. with a standby credit of an additional $20,000,000. The loan would be secured by 10,000,000 shares of I.O.S. Management Company. The Board of Directors of I.O.S. would cause 51% of the preferred stock of I.O.S. (the vote of which would elect two-thirds of the Board of Directors) to be placed in a voting trust for a period of 3 years and Mr. King and his consortium would be the trustees. Options to acquire stock of Mr. Cornfeld and the granting of warrants to purchase stock were also a condition of the offer.

A 1967 settlement order of the SEC with I.O.S. provided that any firm which owned 1% or more of the outstanding shares of I.O.S. could be classed as an "affiliate" and could be precluded from engaging in the securities business in the United States or selling its securities in the United States or to United States' citizens. Therefore, to the Debtor or any other United States corporation becoming a member of a consortium which would acquire the stock of I.O.S. it would be necessary for the SEC to remove or ameliorate the restriction unless it were decided that the terms of the settlement order did not apply to those persons who were not party to the order.

On May 1, 1970, Mr. King and counsel for the Debtor met with members of the SEC and certain members of its staff to explain the proposed acquisition of control of I.O.S. The SEC refused to take any official position in the matter and stated that the Debtor would have to rely on advice of its legal counsel.

Mr. King met with Mr. Byron Boone, a director of the Debtor and a member of the Executive Committee, in California on Sunday, May 3, 1970. Mr. Boone states that the general parameters of

the proposed transaction were discussed by Mr. King. The only mention Mr. Boone recalls of the King Trusts is that Mr. King wanted to disclose the existence of I.O.S. stock in the trusts and to further state that in the event the Debtor should gain control of I.O.S., the stock in the trusts could be transferred to the Debtor and that the consideration would be the cost to the trust plus 20%. According to Mr. Boone, no mention was made to him regarding the existence of loans with banks controlled by I.O.S., or the repayment thereof. Mr. Boone advised Mr. King that he believed the proposal suggested for the control of I.O.S., was a good proposal and that he undoubtedly would back it if it was presented to the Board of Directors of the Debtor. He was agreeable that the Debtor, its officers and directors should get busy and attempt to raise the necessary funds, so that in the event the proposal were accepted by the Board of Directors of I.O.S., and by the Board of Directors of the Debtor, the Debtor would be ready to meet the commitments. Mr. Boone states that at no time did he, as a member of the Executive Committee, authorize or approve the proposed transaction and states that he told John M. King any such proposal would have to be submitted for approval to the full Board of Directors of the Debtor.

On May 11, 1970, John M. King entered into a letter agreement with I.O.S., substantially in accordance with the initial proposal with a closing for the first $20,000,000 to be made on May 13, 1970. By May 13, 1970 eight million dollars had been forwarded to Delacap - $2,000,000 through the efforts of Bennett King, $2,500,000 from Continental Illinois National Bank, $1,000,000 from American Bank and Trust Company, New York City, New York, $2,000,000 from Delacap and $500,000 probably from the Miami National Bank.

On May 13, 1970, the agreement of May 11, 1970, was modified to provide for a partial closing with an $8,000,000 three year loan to be made by the Debtor with the balance of $20,000,000 to be furnished on May 25, 1970, (later extended to May 29, 1970). The agreement was further modified to provide that if the Debtor were unable to obtain institutions to join the consortium, the loan could be converted to a one-year loan; that the Debtors' subsidiary, IPL would receive warrants to purchase I.O.S , Ltd., preferred shares and that the Debtor could designate three members of the I.O.S. Board of Directors until the loan was repaid. The $8,000,000 loan was consummated with funds of the Debtor held by Delacap without authority of the Board of Directors of the Debtor.

Between May 13, and May 29, 1970, personnel of the Debtor and Delacap attempted to raise an additional $12,000,000, and the SEC was again contacted. On May 22, a letter was delivered to the SEC requesting that it assure the Debtor, The Colorado Corporation (which was then proposed to merge into the Debtor), and The Denver Corporation, which was a member of the National Association of Securities Dealers, that no action would be taken by the SEC if the Debtor consummated the transaction. The SEC replied that it could make no such assurance. The additional $12,000,000 was not raised, and John M. King did not consummate the transaction as framed. The Debtor elected to convert the $8,000,000 loan in accordance with the terms stated above.

Since John M. King did not gain control of I.O.S., Delacap began enforcing collection of its $10,000,000 loan to Mercantile as Trustee of the King Children Trust. It sold the I.O.S. stock which had been pledged and realized on its cash collateral. Between May 26, 1970, and June 30, 1970, $2,800,000 was paid to Delacap from the funds of the Debtor.

On June 30, 1970, Delacap surrendered the stock of The Colorado Corporation and King Resources Company, and your Trustee is informed that the certificates were surrendered to Mr. King

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and to a Trustee of The Domestic Trusts, Mrs. John M. King.

A narrative statement on the subject of the take-over attempt and payment of the I.O.S. Bank was made by Mr. King at the Board of Directors meeting of the Debtor held on February 1, 1971. The statement was prompted by the then recent action filed by the SEC against the Debtor, Mr. King, A. Rowland Boucher and Timothy Lowry and the request of that agency that a receiver be appointed. The conversations of the parties were tape recorded by the secretary. The tape and a transcript of Mr. King's statement will be filed with the Court.

The loan of Robert Galvin to the Debtor of May 4, 1970 in the amount of $2,000,000 was paid on June 3, 1970. The loans of Continental Illinois National Bank of May 13, 1970 in the total amount of $2,500,000 were repaid on May 29, 1970.

The Board of Directors of The Debtor met on June 1, 1970 in Denver Colorado and the I.O.S. transaction was discussed. Motions were presented for approval of the transactions.

The results of the investigation lead to but one conclusion. Although it may have been a prerequisite to any offer of take-over being considered by the Board of Directors of I.O.S., that the I.O.S. bank loans be paid, it clearly was not initially contemplated by any one including Mr. King that the Debtor would loan money to the King Trust and Cowett Trust. Although $5,000,000 ($2,000,000 of which was secured by Mr. King personally) was initially transferred to Delacap by the Debtor, its purpose was as collateral. It was not until the so-called take-over had failed that the financial resources of the Debtor were wrongfully used to satisfy, not obligations to the I.O.S. Bank, but the obligation of Mercantile Bank and Trust Company, as Trustee of the John M. King Childrens' Trust to Delacap. At least $5,800,000 of the Debtor's cash resources was used to satisfy this obligation. These expenditures were made without authority of the Executive Committee or the Board of Directors of the Company. The loss is undoubtedly an additional $2,000,000, in that Mr. King withdrew $2,000,000 from the Debtor on May 14, 1970 and the record indicates that this was in satisfaction of the amounts deposited to the Debtor's account on May 4, 1970 as a result of Mr. King's borrowings from banks.

f. IRL

Because I.O.S. desired investments in resources prospects in other countries, such as South Africa, Turkey, Israel and the South American countries, International Resources Limited was formed in 1968 as a wholly owned subsidiary of the Debtor. It acquired assets such as titanium permits, copper concessions, timber permits and diamond concessions in anticipation of doing business with a new entity to be created by I.O.S. At the request of Mr. Cowett, IRL purchased a titanium prospect located at Cape Morgan, South Africa, for $8,000,000 from Mr. Leon Levy. The value of the property is approximately $2,500,000. Your Trustee is informed that at the time of purchase Mr. Levy was indebted to Mr. Cornfeld and that the indebtedness was repaid by Mr. Levy to Mr. Cornfeld by use of the proceeds received from IRL. The new entity was to commence business in 1970, and Mr. Cowett estimated that the volume of the business would be between $300,000,000 and $500,000,000 yearly. The I.O.S. entity was not formed, and IRL did not have a customer for its prospects. All such prospects were subject to ongoing work commitments.

g. Imperial-American--Lark Oil Transaction

In the latter part of 1968, John M. King met with Mr. Jene Harper, President of Franklin Supply Company, (Franklin Supply). Mr. King advised Mr. Harper that Mr. King's companies

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would be doing $30 million in business with Franklin Supply in the next three or four years and, accordingly, he desired a favor. The favor was for Franklin Supply or one of its subsidiaries to purchase for $1,462,176 from Imperial-American the leases and other properties and interest its subsidiary held as the general partner of limited partnerships denominated Imperial-American Resources Fund Partnerships 1966-4, 1967-1 and 1967-2. The stated amount was the announced cash surrender value of all limited partners' interests in such partnerships as of September 30, 1968. Mr. King further advised Mr. Harper that he would cause the companies over which he had control to do sufficient business with Franklin Supply so that Franklin Supply would not be required to use its cash resources to pay the purchase price. Mr. Harper agreed. A formal written contract was prepared and executed by Imperial-American, and Lark Oil Company, (Lark Oil) a subsidiary of Franklin Supply. The purchase price was to be made in installments. Mr. King further executed a letter agreement which was accepted by Mr. Harper as President of Lark Oil which assured Mr. Harper that Lark Oil would be held harmless from any loss and that Mr. King would cause sufficient "business" to be had with Franklin Supply to pay the purchase price. The Debtor had established an account with Franklin Supply whereby it had advanced proceeds to Franklin Supply and Franklin Supply would guarantee the price of pipe to the Debtor. The proceeds from this account were wrongfully transferred by Franklin Supply to Lark Oil and used by Lark Oil to make the initial payment on the purchase price. As payments became due on the purchase contract with Imperial-American, the officer of the Debtor would advance funds to Franklin Supply under the guise of additional funds for the pipe price guarantee account. Franklin Supply would then transfer the funds to Lark Oil and Lark Oil would pay Imperial-American, the installment.

In its prospectuses of January 1[illegible]9, and June 15, 1970, Imperial-American, stated:

> "As of November 30, 1968 the leases and other properties and interests of Imperial-American Resources Fund Partnerships 1966-4, 1967-1 and 1967-2 were purchased by an unaffiliated corporation ('buyer') for $1,462,176 (the aggregate cash surrender value of all limited partners' interests as of September 30, 1968), payable in installments of $73,109 upon execution of the contract (December 30, 1968), $73,109 on or before January 21, 1969 and $328,989 on each of April 1, July 1 and October 1, 1969 and January 1 of 1970, together with interest on the unpaid principal balance at the rate of 7% per annum. All equipment leases and all equipment owned by such Partnerships will be assigned to buyer. Possession of the various properties and interests of such Partnerships passed to buyer as of November 30, 1968, from which date buyer has been entitled to all production from, and will pay all expenses in connection with the operation of, such properties and interests. Title to such properties and interests will not pass to buyer by assignment until the purchase price has been paid in full. The contract provides for reversion of all such properties and interests upon a default for more than 15 days by buyer in the payment of any such installment and for forfeiture of all sums theretofore paid by buyer. The General Partner intends to reinvest each installment payment received on account of the purchase price in the Limited Partnership next formed after such payment, on behalf of the Planholders in the 1966-4, 1967-1 and 1967-2 Partnerships (ratably). The amounts thus reinvested will represent 100.0%,

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96.3% and 70.2% of Planholders' original capital investments in those respective Partnerships (being the cash surrender values of their interests as of September 30, 1968). Upon assignment of the properties to buyer and reinvestment of the proceeds of such sale, the three Partnerships will be terminated. The sale of the properties and interests held by those three Partnerships was, in the judgment of the General Partner, in the best interests of the Partnerships.

By October, 1969, the officers of the Debtor had forwarded $1,100,000 to Franklin Supply. Lark Oil paid to Imperial-American $1,100,000 on the contract but did not pay the installment due on January 1, 1970.

When it became obvious in 1970 that Mr. King would not be doing $30,000,000 in business with Franklin Supply as the debtor was not even paying its current bills, Mr. Harper began insisting that Mr. King honor his letter agreement.

In the fall of 1970, intermixed with another transaction, the leases and other properties and interests which were the subject of the Imperial-American contract with Lark Oil were transferred to the Debtor and the Debtor assumed and agreed to pay $362,167 to The Colorado Corporation, the then assignee of Imperial-American -- the balance of the purchase price on said contract. In addition, the receivable of $1,100,000 due the Debtor from Franklin Supply was cancelled by the Debtor acting through its President A. Rowland Boucher. At the time of the closing Mr. Timothy O. Lowry, the General Counsel of the Debtor and also the personal attorney of John M. King insisted upon and received from Lark Oil the original of the letter of guarantee of John M. King. The net future cash reserves from the properties at the time of transfer to the Debtor was approximately $300,000.

The conclusion reached by your Trustee is that the initial "cash surrender value" of the limited partners' interests in the Partnerships 1966-4, 1967-1 and 1967-2 was grossly exaggerated and to establish some credibility as to their value, Mr. King caused a fictitious sale to be made to an "unaffiliated corporation" with the proceeds thereof being used to promote further drilling funds. It was inevitable that someone would suffer the loss of the difference between the actual value of the properties and the price paid. This loss was sustained by the Debtor.

h. Sun Oil Transaction

In June of 1970 the management of I.O.S. changed. Thereafter Fund of Fund not only ceased making purchase of interests but would not pay for ongoing work commitments. Further, John M. King, Mecom and Lakeshore Associates did not make the payments due on their contracts.

The Debtor was unable to pay for the work commitment required to maintain the Canadian Arctic Oil & Gas Permits. In September of 1970 the Debtor entered into an agreement with Sunoco E & P Limited, (Sunoco) a subsidiary of Sun Oil Company, whereby Sunoco could earn a 15% working interest in a number of the permits by paying 60% of a $16,600,000 work program. If the Debtor had not entered into such an agreement the interest of the Debtor and Fund of Funds probably would have been lost. The agreement further provided that operations during the time of said work program would be in Sunoco, and in the event the Debtor failed to make payment of 40% of the cost of the program when invoiced, the interest would be forfeited to Sunoco. The Debtor did not make the payments as they became due and at the time of the within proceeding was commenced it had not paid its share of the costs. Sunoco gave notice of forfeiture on August 17, 1971.

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Sunoco entered into separate agreements with Fund of Funds and Consolidated and commencing in early 1971, these parties made payment directly to Sunoco - not on the basis of the agreements of December of 1969 and January of 1970, but rather on the percentage of their claimed working interest; that is, 45% in Fund of Funds and 3.125% in Consolidated.

i. Fund of Funds Spin-Off to Global

In an effort to reduce the amount of the cash redemption price of the certificates of Fund of Funds, the Board of Fund of Funds attempted to spin out the assets held in the F.O.F. Proprietary Fund, Natural Resource Fund Account together with 49% of the preferred stock of I.P.I. (real estate company), into a United Kingdom Corporation named Global Natural Resources Limited, (Global) and then tendered the stock of this new corporation to the then certificate holders of Fund of Funds. The action was to have taken place on August 7, 1970. The stock in the new company was not made available to the certificate holders of Fund of Funds until April of 1971. In the interim, Mr. Robert Vesco gained control I.O.S., Ltd. He arranged a management agreement between Global and a company, the stock of which was later transferred to a company he beneficially owned. He then transferred the stock of the management company to Global for stock in Global, and the management agreement was cancelled. Mr. Vesco thereby obtained 950,000 shares of Global for nothing. The voting of this 950,000 share block, in the opinion of your Trustee, has elected all directors of Global since the issuance thereof.

Recently, the SEC commenced an action against Mr. Vesco, I.O.S., Ltd., Fund of Funds and others. The United States District Court for the Southern District of New York announced that it will appoint a receiver. Your Trustee does not know whether the Receiver will make claim to the assets claimed by Global, title to which may still be in the Debtor.

j. Change of Business and Defaults

By the summer of 1970, the Debtor was required to drastically change its mode of business. It attempted to develop its own working interests in the properties; however, it found that many of such properties required the development of not only its own working interest but the working interest of Fund of Funds and others, who, for one announced reason or another, would not pay their share of the costs.

In September of 1970, the Trade Creditors and the Debtor entered into a formal Trade Creditors Plan covering approximately $15,000,000 in trade debt. The plan called for payment of monthly installments on the debt and required the debtor to secure the debt by executing a Mortgage and Security Agreement covering the Debtor's interest in Long Island and Diamond Island located in Casco Bay near Portland, Maine and, in addition, to execute a negative pledge.

In the fall of 1970 an informal agreement was entered into with banks holding notes totaling $19,900,000 wherein the Company would pay the indebtedness down at the rate of 5% per month. Later, the Debtor assigned certain properties to secure the indebtedness.

The total number of employees of the Debtor dropped to 378 in January of 1971, to 127 in August of 1971. As of October 1, 1973 the number of employees exclusive of South African personnel is 65.

The Debtor was unable to meet its commitments to the trade creditors and to the banks. Mechanics' liens and Internal

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virtually all of the properties of the Debtor, effectively topping the flow of cash to the Debtor and precluding the development of its oil and gas prospects. A[illegible] had [illegible] paid its share of development costs, the Debtor was [illegible] the verge of losing its major prospect by forfeiture; [illegible] its interests in the Canadian Arctic Oil and Gas Permit.

In the agreements with Continental Illinois National Bank, Marth Oil Company and Evanston Charitable Association, the percentage of dedication of revenues from production was 40% to be increased to at least 85% and in some instances to 100% if certain minimum payments were not made. The minimum payments were not made and appropriate demands were made upon production purchasers.

The Debtor did not make the interest payments on the debenture issues and the indenture trustees declared defaults and accelerated the payment date.

At the time the within proceedings were commenced, August 14, 1971 virtually every asset of the Debtor was either encumbered, subject to forfeiture or located without the United States of America. The Minutes of the Board of Directors of Debtor on March 19, 1971, reflect a discussion relative to the proceeding being instituted pursuant to the Bankruptcy Act. If the proceedings had been instituted then, instead of some five (5) months later, many of the problems of this estate might have been averted.

3. FINANCIAL CONDITION OF THE DEBTOR

To maintain the Company, this Trustee, over the objections of many creditors, obtained an Order of Court and a commitment from Chemical Bank of New York to borrow $3,000,000 in increments of $250,000 each, secured by Trustee Certificates. The Trustee borrowed a total of $3,000,000. The balance of indebtedness to Chemical Bank is presently $500,000 and the Trustee contemplates repaying the loan in full in the first quarter of next year. Without such borrowing, it would have been impossible to maintain the Debtor and its assets.

The Reorganization Court approved a settlement of the Debtor's dispute with Sunoco and the claimed forfeiture was withdrawn. The Court also permitted the rejection of the contracts with John M. King, Mecom and Lakeshore Associates. The United States Court of Appeals for the Tenth Circuit has affirmed the Court's decision. Mr. King and The Colorado Corporation (the assignee of Mecom's contract) have filed or will file Petitions for a Writ of Certiorari to the Supreme Court of the United States.

The Trustee attempted to obtain a positive cash flow in a three step procedure: (1) a settlement and compromise of the mechanic liens; (2) a settlement of the income tax liability and the posting of specific security to secure the claim for interest equalization tax; and (3) a restructuring of the production payment, including a reduction in the interest rate.

With the assistance of members of the Trade Creditors Committee, a settlement and compromise was reached with the mechanic lien claimants on the major producing properties, whereby the claimant accepted 75% of his claim in cash and 25% thereof as an unsecured claim in the estate. The claimants waive any claim for interest or attorney fees.

Your Trustee has resubmitted an offer in compromise to settle the income tax liabilities to the Internal Revenue Service and the Department of Justice. These government agencies have not replied. Its initial jeopardy assessment of $8,310,169 was overstated by $5,771,014 in view of the tax loss carrybacks and, of the balance, some $1,677,885 of the assessment relates to interest equalization tax claimed as a result of the attempt of John M. King to take over

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Revenue Service is grossly overstated; that the Debtor is not liable for interest equalization tax and at some time, probably when faced with litigating its claim, the Internal Revenue Service will accept a reasonable offer in compromise.

The dedication of 85% of the proceeds from the producing properties must be reduced. As of the end of this year your Trustee believes that the payments will be paid down to a point where the lender will reduce the payment so that a positive cash flow can be achieved.

The cash which can be generated from the producing properties and from the sale of assets not necessary to a reorganized company should not be utilized to pay the pre-petition debt of the Debtor. This money should be used to develop the assets of the reorganized company.

4. TRUSTEE'S COMMENTS ON THE CAUSES OF DEBTORS' CONDITION

It is the belief of this Trustee that the management of the Debtor in the years 1967, 1968, 1969, never considered the possibility that the economic conditions of this country, or for that matter, the world, would ever approach a situation where investors would not invest in mutual funds or natural resource assets; in fact, would be unable to obtain funds to invest in such assets. However, more of the investing public in 1969 found it desirable to put their investment dollars in more conservative stocks and bonds at the then high rates of return. The redemptions of mutual fund shares became greater than the investments. The needs for cash to meet this deficit called for liquidation of assets. The Debtor's assets were not of a type easily sold.

In the middle of this period of losses, and with decreasing income from the various charges made on resource investments, John M. King tried the takeover of I.O.S. and its affiliated organizations. Nearly $20,000,000 of the Debtor's assets and credit were used for this purpose. One can only guess that if this $20,000,000 or a part thereof had been available to the Debtor, whether the Debtor would have had the ability to exist through the 1970-1971 period. The Trustee believes that it would have weathered the condition in some form without needing the help of a Chapter X proceeding.

The Debtor's rapid expansion had created an expensive complex of companies of highly paid personnel and left in Debtor little in the way of funds to protect and develop the assets. Many assets were sacrificed. The contraction of personnel was slow.

The Trustee's investigation of the expenses paid for travel, promotion and similar items shows that they were at a luxuriously high level, were allocated to departments, to companies and to individuals but whether the judgment decisions on such allocations were correct or not, the Trustee cannot express an opinion.

Each Board of Directors of the Company from 1961 forward granted the requests of Mr. King. In most instances, Mr. King made the decisions, consummated the transactions and then presented the same to the Board of Directors for its ratification. The Board of Directors of the Debtor should have taken it upon themselves to become advised as to what resources of the Debtor were to be used to takeover I.O.S. and should have installed safeguards to insure that any cash posted would be returned if the takeover was unsuccessful. Further, the banking institutions involved should have insisted upon like safeguards.

5. MAJOR UNRESOLVED CLAIMS AGAINST THE DEBTOR

a. Global Natural Resources Limited

Global claims that the Debtor is liable to it for damages in excess of $100,000,000 and disputes the validity of the net operating

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profits interest. Its claim for damages is that the Debtor owed its predecessor a fiduciary duty as an investment advisor and instead of vending properties at cost, charged Fund of Funds inflated prices for the interests. It claims that properties were sold to Fund of Funds after it had been determined the property was valueless as an oil and gas prospect. It claims that the net operating profits interest is not a legal burden upon its properties and has petitioned the Reorganization Court for leave to sue the Debtor in Canada for a judicial determination of the interest. Global has not received legal title from the Debtor to many of its claimed assets and has demanded the same.

The Debtor believes that it was damaged by Fund of Funds and Global by their failure to make payments due on work commitments and by reason of I.O.S. not making payment of the $8,000,000 note. Further, the Debtor questions whether Global, because of the machinations of Robert Vesco and his associates is the rightful successor to the assets of Fund of Funds.

There is no question that the Debtor made a profit on its sales to Fund of Funds and some of the sales prices charged were substantially above the cost to the Debtor. The records of the Debtor reflect that on some occasions the properties were invoiced to Fund of Funds after some exploration had been completed. The explanation of the officers of Debtor is that there was always a time lag in the preparation of reports and other papers accompanying invoices, that geological, geophysical and drilling might continue during the invoice period. The Debtor most always retained an interest equal to that offered to I.O.S.

It is obvious that the business relations between the officers of the Debtor and the officers of I.O.S. were conducted so that Mr. King, Mr. Cornfeld and Mr. Cowett would profit. The investors in both companies have suffered by reason of their actions. As between the two companies, they must suffer the consequence of the actions of their own officers who were in charge at the time. Your Trustee has no doubt that Mr. Cowett and Mr. Cornfeld were quite conscious of what charges were being made and actually encouraged the same. As to the validity of the net operating profits interest, it was fully recognized at all times. Personnel of I.O.S. and subsidiary corporations purchased the same.

It is the expectation of your Trustee that the claim of Global for damages and the dispute over the net operating profits interest will be amicably resolved, so that a monetary claim is not recognized in Global and the net operating profits interest is restructured into a more common form of interest.

It is imperative that the parties resolve their differences as it applies to the Canadian Arctic Oil and Gas Permits. If the problems are not resolved the parties will not jointly develop the asset and the same will be lost by the mere passage of time.

b. Consolidated Oil & Gas Company

The Debtor is indebted to Consolidated on a note in the approximate amount of $550,000. Consolidated paid the Debtor approximately $1,600,000 on its contract for a 3.125% interest in the Arctic permits. It has paid Sunoco approximately $400,000. It claims that the Debtor breached its contract by entering into the Sun Oil Transaction and further asserts that the representations were made by Mr. King which were not true. It commenced an action against the Debtor requesting rescission and damages. The Trustee has requested permission of the Reorganization Court to reject this contract. The petition has not been set for hearing.

c. Officers and Directors Liability Insurance, Class Action Claims of Investors, Claims Over of Officers and Directors and Contingent Claim for Contribution of Arthur Andersen & Company.

The Charter of the Debtor and its By-Laws provide that

the Debtor will indemnify the officers and directors of the Debtor for reasonable expenses incurred and liability imposed on claims made against them by reason of their being an officer and director of the company, provided that no such officer or director shall be indemnified in relation to any matter to which he shall be finally adjudged to have been guilty of a breach of duty as an officer or director.

The Debtor secured an Officers' and Directors' liability insurance policy to indemnify it and the officers and directors from claims of third persons. The policy initial limits were $1,000,000 and later were increased to $5,000,000. In the early part of 1969 at the time a former director resigned because of what he believed to be conflicts of interest held by John M. King, the limits were raised to $10,000,000.

The policy is in two parts. The first part indemnifies the officers and directors for claims against them by reason of their being officers and directors for which they are not indemnified by the Debtor and from which they did not personally gain. The claims the Debtor may have against the directors may be covered by the first part. The second part of the policy indemnifies the Debtor for loss it sustains by reason of indemnifying its officers and directors.

The insuror has commenced an action against the Debtor and certain of its officers and directors, claiming that the policy is void from its inception, by reason of certain representations which it claims were false, namely, that no officer or director knew of any factual situation which may lead to a claim by third persons against the Company or its officers and directors, based upon conflicts of interest.

The Trustee is defending the action and requesting the Court to declare the policy in full force and effect, mainly, upon the basis that if there were such factual situations at the time of the issuance of the policy, the insuror knew about the same or should have known thereof in that its agent was in daily contact with the Debtor and the insuror or one of its group insured under all types of insuring agreements, all other persons or entities with whom the alleged conflict existed.

Investors in the stock and domestic debentures of the Debtor have commenced class actions against the Debtor and all of its officers and directors. The claims total in excess of $300,000,000. Arthur Andersen & Company, the Debtor's independent accountants, is also a party defendant. Said investors, acting through class action plaintiffs, have filed claims in the estate. The claimants generally allege that the securities were misrepresented to them in that the profit of the Debtor was grossly overstated and that full disclosure of the transactions with I.O.S. and The Colorado Corporation were not made. The officers and directors of the Debtor have filed contingent claims against the estate asserting that the Debtor, by reason of the indemnification provisions of the Charter, is responsible, not only for any eventual liability, but also their costs in defending the actions. Arthur Andersen has filed a contingent claim against the Debtor and its officers and directors asking for contribution in the event the class action plaintiffs are successful.

It is hoped that these problems can be resolved by the insuror paying some money to the Debtor in cancellation of claims the Trustee has against those directors who did not personally gain from the transaction (the Trustee will not cancel the claims it has against officers and directors, mainly John M. King, where it can be demonstrated that they personally gained); that the class action plaintiffs representing so-called defrauded investors between certain dates be paid some money by the insuror and the Trustee will recognize an unsecured claim in such class, and in exchange therefor, the policy will be cancelled; the class actions will be dismissed against the individuals (except as to those who may be covered by other insurance); and the individuals will withdraw their claims for indemnity.

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The class action plaintiffs intend to proceed against Arthur Andersen and Company. The claim over for contribution by Arthur Andersen and Company against the Debtors would have to await the outcome of the class action claims against it. In the event the plaintiffs are successful against Arthur Andersen and Arthur Andersen is successful in its claim over, it is the suggestion of the Trustee that the class action plaintiffs reduce the dollar amount of their claims against Arthur Andersen by the economic equivalent of the dollar claim for contribution against the Debtor.

The task of settlement will be difficult but not impossible.

d. John M. King and Affiliated Companies

John M. King is personally in a Chapter XI Arrangement Proceeding. The Colorado Corporation is presently resisting an involuntary petition in bankruptcy and Imperial-American is undergoing reorganization under Chapter X.

There are many claims by all parties against the other. Your Trustee believes he can successfully defeat any claim made by Mr. King or his companies. If a claim is honored your Trustee will request that it be equitably subordinated to the claims of all others.

The Trustee's claims against Mr. King and his corporations are many and will not at this time be separately discussed. Your Trustee believes a claim against Mr. King is presently uncollectable.

6. THE ASSETS AND LIABILITIES OF THE DEBTOR

The major assets of the Debtor are described in Annex A, together with the Trustee's estimates of values as of June 30, 1973. Your Trustee has authorized Mr. Gene Roark, his consultant, to retain experts to make appraisals of said properties in preparation of the hearing scheduled for December 3, 1973.

In regard to the Canadian Arctic Oil & Gas Permits, the interest of the Debtor cannot be definitely described in that the controversies between the Debtor and Global and Consolidated have not been resolved. The port facility's highest and best use is as a deepwater port. Because of the objections made by ecologists, the facility is presently being used for storage of fuel oil only.

The assets of IRL are considered to be equal to only the debt of that company to the Trustee, Bank of America and Credit Suisse (all claim to be secured) and accordingly, the stock of IRL is of no value to the Debtor.

Annex B reflects the liabilities of the Debtor as reflected by its books as of June 30, 1973 with adjustment therein taken by the Trustee to reflect claims which he will contest and claims which he may allow but are not reflected in the books.

The amounts ascribed by this Trustee to the total assets and liabilities of the estate are based upon the assumption that there will be a reorganization of the Company; that the reorganized Company will be completely debt free with a sufficient cash flow to enable it to continue to develop these assets; that the questions between the Debtor and the Global Natural Resources Properties Limited will be amicably resolved; and that the claims of the investors will be resolved by the recognition of a claim in them as a creditor of the estate.

The Trustee recognizes that the preparation of Annex A and Annex B included his affixing values to assets and liabilities which in the final determination will be the judgments of numerous courts after the taking of evidence. The evidence is not all available and the Courts' judgments unknown because the Trustee has approached the valuation of assets and liabilities with the same

philosophical viewpoint, hopefully the differences may balance each other.

7. LITIGATION

Your Trustee instituted an action on the fidelity bond of the Debtor and pursuant to approval of the Reorganization Court settled the action and received $2,500,000. This asset is reflected in the cash of the Debtor. Your Trustee has instituted an action against Franklin Supply, Lark Oil, A. Rowland Boucher, Timothy G. Lowry and his former law firm requesting judgment in the amount of $1,100,000 based on the Imperial American-Lark Oil transaction. In the event the officers and directors insurance policy-class actions by investors-is not settled, your Trustee intends to press suit against the directors for failure to maintain the assets of the Debtor and in permitting John M. King to use the same for his own gain. Your Trustee intends to continue the investigation as to the responsibility of banking institutions. Appropriate claims will be filed in the John M. King and The Colorado Corporation estates.

8. IRL SHOULD BE LIQUIDATED

The necessary capital to exploit the assets is not available. The Company should be liquidated in the expectation that the proceeds therefrom will be sufficient to repay the Debtor's estate for expenditures made, Credit Suisse and Bank of America.

9. THE BUSINESS OF THE DEBTOR SHOULD BE CONTINUED AND THE DEBTOR REORGANIZED

In the opinion of the Trustee, the business of the Debtor should be continued and the Debtor should be reorganized. The nature of the assets of the Debtor, especially the oil and gas prospects are such that if the Debtor were liquidated, the dollar amount received would be wholly insufficient to pay the creditors and a purchaser of the assets who has the resources to develop the asset, would experience a windfall. The difference between what creditors of the Debtor would receive if liquidation occurred and the potential of what they may receive if reorganization is permitted, is so substantial, that it is in the best interest of all who would participate for the Debtor to be reorganized.

The Debtor, if reorganized within the immediate future, under a different name, stands a reasonable chance of succeeding as an oil and gas company, if the cash from its producing properties and from the sale of assets unnecessary to the new company is sufficient to develop the oil and gas interest of the Debtor. To accomplish such a result, it will be the suggestion of this Trustee that all unsecured creditors and those creditors who are not fully secured, take an equity position in the reorganized company in cancellation of their debt.

Respectfully submitted,

Charles A. Baer

Charles A. Baer, Trustee of
King Resources Company and
International Resources Limited

John S. Pfeiffer

John S. Pfeiffer,
Attorney for Trustee
1900 Security Life Building
Denver, Colorado 80202
893-1000

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ANNEX A

ASSETS

	Description	Estimated Value
1.	The major producing oil and gas properties of the Debtor were the subject of a report made by Kravis & Associates as of January 1, 1972. The estimated reserves at that time were in excess of $26,000,000. The Trustee believes that in spite of two years depletion on these properties because of the change in the market price of oil and gas that the reserves are in excess of the previous report. The Debtor also has numerous small producing properties with reserves in excess of $1,000,000 and residuals in excess of $500,000 on other properties.	$14,300,000
2.	The Debtor has in excess of 1,000,000 acres of undeveloped oil and gas properties in Montana, Wyoming, Colorado, Utah and New Mexico.	3,000,000
3.	The Debtor has in Canada, principally in the Province of Alberta, producing and non-producing oil and gas acreage with estimated reserves in excess of $9,000,000.	4,500,000
4.	The Debtor acquired interests in oil and gas permits in the Canadian Arctic Islands and while the gross amount of acreage and the total permits is in excess of 36,000,000 acres, the Debtor's original net position was closer to 22,000,000 acres and probably at the present time owns something in the nature of 8,000,000 net acres.	30,000,000
5.	The Debtor owns a 70% interest in a joint venture covering Block 175 East Denver, on which is situated three office buildings.	3,000,000
6.	The Debtor owns storage facilities and an oil terminal on Long Island and Great Diamond Island in Casco Bay, Portland, Maine.	3,000,000
7.	The Debtor owns, through a subsidiary, 23.169% of an oil and gas permit in the Dutch North Sea, normally referred to as Block L-14.	1,700,000
8.	The Debtor owns in Canada, an interest in several mining permits on which considerable exploration has been done.	-0-
9.	The Debtor owns, through a subsidiary, an interest in cash and real estate in Mexico City.	500,000
10.	The Debtor owns 75%, and through a partnership, additional percentage of mining claim near Revelstoke, British Columbia, Canada on which is located the Mt. Copeland molybdemum mine.	500,000

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11.	Other investment and securities.	1,244,000
12.	The Debtor has through a subsidiary, International Resources Limited, interests in four titanium beach sand projects, and interest in a company having diamond claims in Southwest Africa, a majority interest in a company having a prospecting permit for copper in Southwest Africa, an interest in several oil and gas permits in the interior of Turkey, an interest in several permits off-shore Turkey, and an interest in a partnership with oil and gas permits in the Sinai Peninsula and the Gulf of Suez.	-0-
13.	The Debtor has numerous accounts receivable, notes receivable and claims against other parties.	3,220,000
14.	The Debtor has quite extensive files covering geological, geophysical and other engineering data on numerous mining properties, oil and gas prospects, which from time to time are usable by the Debtor and by others.	-0-
15.	The Debtor was insured by several policies issued by the American Employers Insurance Company under what is generally referred to as an Officers and Directors Liability Policy.	1,500,000
16.	Cash in bank accounts as of June 30, 1973.	5,865,000
17.	Other property and equipment.	353,000
18.	Prepayments.	522,000
19.	Inventories.	73,000
	Total Assets	$76,279,000

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ANNEX B

LIABILITIES

1.	Prepaid Gas Contracts		$ 1,500,000
2.	Production payment to Continental Illinois National Bank, et al.		6,286,000
3.	Notes Payable:		
	Banks	$18,240,000	
	State of Ohio	8,000,000	
	Secured Mortgages	238,000	
	Others	724,000	27,202,000
4.	Accounts Payable:		
	Pre-Petition accounts payable and accrued liab	19,245,000	
	Estimated claims based on guaranteed indebtedness of subsidiaries after liquidation	-0-	
	Estimated claims for taxes due, including Internal Revenue Service	500,000	19,745,000
5.	Convertible Subordinated Debentures		39,456,000
6.	Trustee's Certificates Payable		2,000,000
7.	Post-Petition debt and Trustee's accounts payable		1,855,000
8.	Estimated unsecured debt based on claims of defrauded investors		10,000,000
9.	Legal fees, liquidation costs, settlements		1,043,000
	Total Liabilities		$109,172,000

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JRW:ma

May 19, 1976

Hon. Marvin E. Frankel
United States District Judge
Southern District of New York
United States Courthouse
Foley Square - Room 2002
New York, New York 10007

Re: United States v. King, 75 Cr. 70

Dear Judge Frankel:

This afternoon we received a call from the defendant Boucher's counsel inquiring if Mr. VonStein had obtained in the course of his investigation a report by the Trustee of King Resources Co. dated October 10, 1973. Counsel indicated over the phone that this particular report contained materials relating to the issues in this case and was based on Boucher's 1973 testimony pursuant to Section 167 of the Bankruptcy Act.

A copy of that and two other reports have been found in our files, and we enclose copies of all three reports. Mr. Von Stein tells us that he believes he obtained the October 10 report and the Trustee's application Number 65 from John Pfeiffer, who is counsel to the Trustee of King Resources, some time in the fall of 1973. Mr. Von Stein cannot be positive about this because the back page of the October 10 report indicates that it is a copy that was mailed to The Fund of Funds in Switzerland, and he may have obtained it in the summer of 1975 at the same time he picked up a number of other documents in Switzerland. The third document was obtained by Mr. Von Stein in the fall of 1975 from the Chicago office of the Securities and Exchange Commission.

Exhibit K

Hon. Marvin E. Frankel

To the extent that any of these documents contain any information given by Boucher in his testimony at the Section 167 proceeding in August, 1973, we do not believe them to be "tainted" because, for the reasons stated in our previously submitted memorandum of law, that testimony was not immunized. In addition, we are submitting a group of documents comprising of notices to creditors of or statements by John King, which were obtained by Mr. Von Stein in the fall of 1975. While we have no reason to believe these documents refer to any testimony given by Mr. King at his bankruptcy proceeding, we have avoided reading them as a cautionary measure.

Due to the shortness of time, we felt it advisable to bring these matters to the Court's attention immediately, and we will submit an affidavit with additional facts as soon as we can ascertain them.

Respectfully yours,

ROBERT B. FISKE, JR.
United States Attorney

By: _____
JOHN R. WING
Assistant United States Attorney

Enclosure

cc: Michael Armstrong, Esq.
Barrett, Smith, Schapiro & Simon
26 Broadway
New York, NY 10004

Andrew J. Maloney, Esq.
Maloney, Viviani & Higgins
1290 Avenue of the Americas
New York, NY 10019

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THIS ORDER IS AN ORDER DIRECTING A PRIVATE OR NON-PUBLIC INVESTIGATION AND IS BEING FURNISHED TO YOU AT YOUR REQUEST FOR YOUR OWN USE.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 24, 1973

In the Matter of

FUND OF FUNDS LTD.
KING RESOURCES COMPANY

File No. HO-669

ORDER DIRECTING A PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. The securities of King Resources Company ("KRC") are registered with the Commission under Section 12 of the Exchange Act and are traded on the over-the-counter market.

B. John M. King ("King") owns approximately 16% of the outstanding stock of KRC and until August 13, 1970 was Chairman of its Board of Directors.

C. Fund of Funds ("FOF") is an open end mutual fund incorporated in Canada with shareholders throughout the world. Its management company, FOF Management Co., Ltd., is a subsidiary of the IOS Ltd. ("IOS"). Both are defendants in S.E.C. v. Robert L. Vesco et al., 72 Civ. 5001, U.S.D.C., SDNY, filed November 1972.

II

Members of the staff have reported to the Commission information which tends to show that:

A. From on or about January 1, 1968 KRC sold to FOF and its subsidiaries securities, including undivided interests in oil and gas properties.

B. KRC, IOS, FOF, their officers, directors, and others participated in the sale, valuation, and reporting of such securities. Such securities were incorporated in the public valuation and reports of FOF. In 1970, certain assets of FOF, including those purchased from KRC, were placed in a newly formed English non-resident corporation named Global Natual Resources Properties Ltd. ("Global").

C. While engaged in the offer, purchase, and sale of such securities and of shares; KRC, IOS, FOF, their officers, directors, employees, John M. King, Robert

Exhibit L

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Edward M. Cowett and others made untrue statements of material facts and have omitted to state and are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things; (1) the value of shares of FOF, and (2) the value, productivity, and merit of the securities sold by KRC.

D. From on about January 1, 1968 KRC, IOS, their officers, directors, employe John M. King, Rowland Boucher Edward M. Cowett and others employed devices, schem and artifices to defraud and engaged in transactions, acts, practices, and courses of business which may have operated as a fraud and a deceit upon the public and FOF in connection with solicitations to purchase, purchases, and sales of the securities mentioned in paragraph II above and shares of FOF in that, among other things, (1) the above named persons obtained money from FOF and FOF shareholders through misrepresentations and omissions to state material facts and concealment of material concerning the nature, quality, and value of the securities sold to FOF and its subsidiaries including undivided interests in oil and gas properties, (2) the above named persons participated in acts which misrepresented such securities, and (3) as of the scheme, FOF established Global, placed in Global such securities, and distri Global's shares to shareholders of FOF.

E. While engaged in the offer, sale and delivery of said securities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

III

The Commission having considered the foregoing, deems it appropriate and necessary and for the protection of investors that a private investigation be made;

1. to ascertain the facts concerning the matters set forth in paragraph II above, and

2. to determine whether there have been possible violations of Section 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IT IS ORDERED, pursuant to the provisions of Section 21(a) of the Securiti Exchange Act of 1934, that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, that for the purpose of such investigation, Donald J. Stocking, Joseph F. Keys, John J. Kelly, Jr., Robert Laprade, Thomson von Stein, James E. Sims, and Jerald Lamotti and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Ronald F. Hunt
Secretary

JRW:dlf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and : 75 Cr. 70 (MEF)
A. ROWLAND BOUCHER,
:

Defendants. :

- - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN R. WING, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and I am familiar with the facts and proceedings in the above-captioned case.

2. This affidavit is submitted in opposition to the defendants' multiple post-trial motions to dismiss the indictment, to set aside the guilty verdicts and for judgments of acquittal, or in the alternative for a new trial.

3. On January 29, 1975, Indictment 75 Cr. 70 was filed against the defendants King and Boucher, charging them in four counts with securities fraud, mail fraud, wire fraud, and conspiracy in violations of Title 15, United States Code, Section 78(j) and Title 18, United States Code, Sections 1341, 1343 and 371. On July 1, 1976, after a six week trial before the Hon. Marvin E. Frankel, United States District Judge and a jury both defendants were found guilty on all counts.

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4. Defendants have now renewed their pretrial motions to dismiss the indictment on the ground of intentional and prejudicial delay in the Government's investigation and prosecution of this case. Defendants argue that because of certain information provided to the Denver SEC office by Dr. Frederickson in March, 1971, the SEC had been informed at that time of "all factual allegations" of the fraud and knew of "all relevant witnesses and all key documents used by the Government to prove the allegations at trial." (Armstrong affidavit pp.1-2). The evidence at trial clearly contradicts this claim. While Frderickson's information was relevant to the Mecom sale aspect of the fraud for which these defendants have been convicted, the mosaic of proof presented through 40 witnesses and more than 300 exhibits during a six week trial involved numerous "factual allegations," "witnesses" and "documents" of which the SEC had absolutely no knowledge in March 1971 or for some time thereafter.

5. Without reviewing all the evidence in detail, it is worth noting that in March 1971, the SEC had no knowledge of such matters as:

(a) The two Arthur Andersen representation letters signed by King and Boubher in January and May 1970 which constituted the primary false or counterfeit documents in the case, plus the other false statements made to Arthur Andersen (Hubbard's January interviews of King and Boucher, Boucher's false representation letter of June 1971) and to the FOF directors (July 1970 meeting at Renfret's offices) as to the bona fide nature of the Arctic transactions. Boucher's counsel recognizes these false statements to be the heart of the fraud in this case. (Maloney affidavit p.7).

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(b) Most of the circumstantial evidence indicating that the Bristol Bay transaction was entered into at an unreasonably high price by Boucher before he ever talked to Cooper. (Cooper's diary notes which indicate that he wasn't asked about Bristol Bay until 7 or 8 days after the contract date were not given to SEC in March 1971 when Cooper was refuting Fredericksen's claim of a COG side deal).

(c) The December 1968 fraudulent valuation based on the Fox-Raff sale.

(d) The under-the-table offer to Standard Oil to induce a purchase of the Arctic interest at $15/acre.

(e) Evidence that KRC's Calgary office was offering the same Arctic property at approximately $4.50/acre up until December 23, 1969.

(f) Evidence that KRC was obtaining 65% of their gross profits based on 35% sales revenues from FOF.

In short, while Fredericksen's information was relevant to the Macom side deal, buy-backs, including Macom's, were not per se illegal, Cooper substantially refuted Fredericksen's claims regarding COG and as of March 1971 the Denver SEC office had no knowledge of the total picture of the fraud charged in the instant case without which the true significance of Macom's side deal was not readily apparent.

JRW:dlf

6. Defendants argue that if the SEC had started an investigation based on Frederickson's information, it would have lead them to Marriott, Mecom and others and they would have obtained the original documents, copies of which had been briefl displayed by Frederickson. Without disputing that supposition the simple fact is that the SEC did not initiate such an investigation for the perfectly legitimate reason that they were already substantially involved in investigating other fraudulent activities of Messrs. King and Boucher. (See affidavit of John Kelly attached hereto). This investigation which had commenced in August of 1970, eventually resulted in two separate criminal reference reports recommending two separate fraud prosecutions of King, Boucher and others relating to matters other than the Arctic. (Copies of these criminal reference reports are enclosed herewith and it is respectfully requested that they be sealed because they relate to non-public matters).

7. I have been advised by SEC officials, Kelly, Krys, Sporkin and Von Stein that to the best of their knowledge, information and belief the SEC's failure to initiate an investigation into the fraud charged in the instant case prior to July 1973 was not based on any purpose to cause any disadvantage or prejudice to either King or Boucher. Based on all of my knowledge, information and belief, I reaffirm my earlier statement that there has been no intentional delay in seeking this indictment in order to gain some tactical advantage over the defendants.

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JEW:dl

8. The SEC investigation which led to this indictment was commenced in July 1973 on the basis of information about King and Boucher defrauding FOF in connection with their sale to FOF of numerous natural resource interests, including the Arctic. This information was first brought to the SEC in June 1973 by attorneys for FOF's natural resource subsidiary under circumstances detailed in Stanley Sporkin's affidavit attached hereto. Shortly after receiving this information the SEC issued a Formal Order of Investigation (attached to Mr. Sporkin's affidavit). There was clearly no "holding back" to let civil litigants develop this case as alleged by defendants.

9. Defendants also make an allegation that the delay was perpetrated to enable the SEC to investigate the defendants "under the guise of looking into one set of transactions -- which never led to indictment -- and at the same time gather information with respect to the charge" in the instant case. (Armstrong's affidavit p.14). There is simply no factual basis for such an argument. The Denver SEC office had every reason to believe that King and Boucher would be criminally prosecuted on the two cases which were referred to the United States Attorney's Office in Denver. It is almost comical to suggest that the SEC was so devious as to be secretly investigating the Arctic while trying to deceive the defendants into thinking that they were actually investigating other frauds.

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10. Defendants allege that the statements made by SEC and other Governmental personnel in pre-trial affidavits on this issue, were either disengenuous or false. That is simply not the fact. To the extent that my pre-trial assertion that the SEC had not known of the fraud "since 1970", (which was and is literally correct), implied no knowledge of Fredericksen's information about the fraud up until 1973, the inaccuracy was wholly unwitting and unintentional. When I filed my pre-trial affidavit, I had not talked with Dr. Fredericksen and had no knowledge of the SEC interviews with him in early 1971. (Fredericksen did not testify in the Grand Jury and was not listed as a prospective Government witness on the list submitted to the Court at that time in connection with the venue motion.) In any event, as previously stated, Fredericksen's information was far from a complete delineation of "the fraud charged in this case" as proved through 40 witnesses and more than 300 documents. Furthermore, the other specific statements challenged by the defense, are essentially correct irrespective of the Fredericksen interviews. (See Armstrong affidavit pp.1-4).

11. To the best of my knowledge, information and belief, the SEC office in Denver was not "investigating this matter in 1970-1972". (See Kally affidavit attached hereto). To the best of my knowledge, information and belief, "questioning of Boucher and King in 1970, 1971, and 1972, concerned matters other than the Arctic sale." Defendants have produced no transcript of any of these interviews indicating otherwise. To the best of my knowledge, information and belief, the June

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JEW:dl 1970 telephone call between Sporkin and Boucher did not reveal any fraudulent conduct by King or Boucher in connection with the Arctic transaction "and there was no SEC investigation of such fraudulent conduct . . . until three years later when an investigation was initiated in July 1973". (See, Sporkin's affidavit attached hereto). Contrary to defense counsel's assertion, the Wall Street Journal article referring to the COG transaction did not lead to a suspension of trading in COG stock but rather was a report about it. There is no indication that anyone at the SEC read the particular Trusblood quote about his ability to turn the Arctic back to KRC and in particular there is no evidence or any SEC recollection that any SEC official ever questioned Trusblood about that statement in 1970.

12. To the best of my knowledge, information and belief, the Denver Grand Jury investigation involved "completely different fraud matters" which "did not concern the Arctic sales which are the subject of the instant indictment". See, the two criminal reference reports enclosed herewith and the affidavit submitted by the Denver Assistant United States Attorneys in support of our answer to the pre-trial motions. While it may well be that Roger Davis and Bennett King were briefly questioned in the Denver Grand Jury about some general aspect of the Arctic sales, it was clearly not the major subject of their testimony before that Grand Jury. Apparently defendants' review of the 3500 material in this case revealed that none of the other 38 Government witnesses testified before the Denver Grand Jury about the Arctic sales. On information and belief, Macom, Marriott, Hulsey, Trusblood, Booth, Hubbard and Carr, never testified before the Denver Grand

JRW:dl Jury at all. If, in fact, the United States Attorney's Office in Denver was presenting any case based on the Arctic sales transactions, it is hard to believe that these witnesses would not have been called before that Denver Grand Jury.

13. In denying this motion prior to trial, the Court stated "there does not appear to be substance in the notion that the delay of which defendants complain was perpetrated with any purpose to cause disadvantage or prejudice or other prosecutorial misstatement of either defendant." Defendants' voluminous post-trial motion papers submitted on this point offer no real basis for changing this conclusion. To the best of my knowledge there is none.

14. Defendants allege that the SEC delay in initiating and completing the investigation in this case resulted in substantial prejudice to their ability to defend themselves because they were deprived of a few specific documents, four specific witnesses and the recollection of certain trial witnesses was less than perfect with respect to several minor matters such as specific dates. Counsel's extensive recitation of alleged prejudice fails to establish with precision any significant prejudice to the defense presented at trial.

15. Defendants argue that they were prejudiced by the fact that the original signed buy-back agreement on the Macon transaction was destroyed by Lowry in January 1972, thereby precluding a conclusive determination as to its existence, its terms and its date of preparation and execution. This document's terms and substantial proof of its existence were clearly available at trial because the carbon copy (GX 7y)

of that signed original was still in Lowry's reading file at the time of trial. For some reason, the defense interest in establishing those "terms" was not sufficient to prevent their objection to the admissibility of this carbon copy. Contrary to defendants' present claim, the terms and date of preparation were not vital to their "contentions at trial", (Armstrong affidavit p.16) because the basic defense was that there were no guarantees of any kind at any time. King testified that he never discussed or authorized any such agreement in any respect, he never signed any such agreement, and he would never have given a personal buy-back guarantee to anyone. (Tr. 3519, 3520, 3537, 3538, 3539, 3731, 3732, 3736, 3737, 3738, 3884). If that defense was to be believed, the presence or absence of the signed original would be of little consequence. Its absence could hardly diminish the existence of the guarantee letter that Lowry did send to Marriott (GX 1) evidencing the precise agreement set forth in the carbon copy (GX 7y) and noting that he (Lowry) would retain the original in his safe, nor could it contradict the testimony of Hulsey, Marriott or Mecom with respect to the guarantees discussed on December 24, 1969. The fraud for which John King was convicted, in no way depended on a reduction of the Mecom guarantees to writing.

16. Moreover, the date of preparation or execution of the signed original would have been no more determinable if we had the signed original, because as indicated on the carbon copy and Government Exhibit 1, the only date would have been that of December 24, 1969, which date reflected the time

as of which King guarantees were to be effective. Mr. Armstrong alleges "it is not unreasonable if Lowry prepared a document and put it in his safe, that he made some sort of notation as to when he put it there". (Armstrong affidavit p.20). Mr. Von Stein has told me that he was advised by Mr. Lowry that Lowry made no such notation and further, that Lowry's attorney advised Mr. Armstrong of that fact.

17. Defendants also claim prejudice with respect to the carbon copy of the signed original arguing that if the SEC had investigated the matter in 1971, the secretary who prepared it "probably would have remembered it, and the file from which it was taken could have been examined to determine when it was prepared and filed". (Armstrong p.21). There is absolutely no logical reason or factual showing to suggest that a secretary who types numerous documents every day, would remember typing or filing this particular document any better one year after the event than five years after the event. Nor is there any reason to believe that Lowry's reading file in which the carbon copy was retained could have provided any more clue as to when this document was prepared and filed if it had been examined in 1971 as opposed to now.

18. Defendants argue that they were prejudiced by the loss of the Mecom's phone records which might have assisted them in corroborating King's claim of his February 10, phone call with Mecom. Curiously enough, King's counsel made no effort to corroborate that claim by asking Mr. Mecom any questions about that phone call on cross-examination. Nor was Lowry questioned in any way by defense counsel at the

JRW:dl trial as to whether he had received the memorandum of the February 10 phone call which King allegedly had sent to him. I have been advised by Lowry that prior to trial he told King and his counsel that he did not have any recollection of ever receiving that memorandum. In any event it is clear that even if such records established a phone call they in no way could corroborate King's account of the conversation. Subsequent investigation by Mr. Von Stein indicates that (a) Mecom's secretary never kept any record of telephone calls made by Mr. Mecom (b) Mecom's telephone bills for that time period may still be available in some storage depot. Apparently in attempting to obtain Mecom's phone records prior to trial Mr. Von Stein had never specifically asked the Mecom staff for telephone bills and thus we were not aware of their existence until this week.

19. Defendants claim that Merriott's loss of his 1970 diary was also prejudicial because it would have been "crucial" on the point of when Merriott received Government Exhibit 1 and when he discussed it with Lowry. I am advised by Mr. Von Stein that Mr. Merriott said there would have been no reference in his diary as to the date of his receipt of Government Exhibit 1 or of his telephone discussion with Lowry. Of course Merriott's memorandum to Mecom of January 2, 1970 (GX 6D) specifically refers to a conversation with both Lowry and Hulsey on that subject on that date.

20. The absence of Mr. Tanner's notes of his interview with Mr. Trueblood can hardly be said to be prejudicial in view of the fact that the notes were translated into the newspaper article on the same day as the interview. In short, the article which appeared the next day was a contemporaneous recording of the interview. Moreover, in May 1970 Trueblood's response to Arthur Andersen about the precise statement was not to deny making it, but rather to claim that it had been taken out of context.

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21. Defendants claim that if the trial had occurred earlier, MacKenzie would have been "readily available" as a witness, is unintelligable. MacKenzie was available as a witness in June 1976. Mr. Armstrong alleges that he spoke to him by telephone during the course of the defense case, and there can be no legitimate reason for suggesting that the man could not testify if the defense had truly wanted his testimony. It is also difficult to imagine how MacKenzie or anyone else could have impeached the tape recording of his conversation in January 1971 in which he told Boucher that the price paid by Consolidated for the Arctic properties was "ridiculous".

22. Defendants further argue that they were prejudiced by the loss of the testimony of three individuals, Walter Montague, Eric Scott and Ed Cowett, who had died prior to the trial. Mr. Von Stein advised me that according to Mecom's secretary, Walter Montague died January 4, 1971 and therefore would have been unavailable for trial regardless of any delay. We have been informed that Eric Scott died in early 1976 some months after the original trial date in September 1975, which date was adjourned on the request of King's counsel. Defendants make no specific showing of how Mr. Scott's testimony would have aided their defense in any significant way.

23. Ed Cowett apparently died in June 1974 and since the earliest pre-trial claims on this point, the Court has been asking defense counsel to explain how Cowett's testimony could have helped them. During the trial, Mr.

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Armstrong's final response to that inquiry was a candid "Your Honor, we do not know" (Tr. p.2732). Defendant's most recent suggestion that if the Government had made Cowett a defendant he would have helped by "actively" participating in a "joint defense" is truly absurd. (Armstrong aff. p.28) Clearly Cowett had no knowledge of and was not involved in the Macom or Consolidated side deals and the defendants did not contend otherwise. Moreover, at defendants' request, Cowett's grand jury testimony relating to the relationship between the FOF and KRC as well as the history of the Arctic sales was read to the jury thereby eliciting much of the material the defense now claims they lost in the absence of Mr. Cowett. It is also fair to say that a substantial amount of evidence concerning Mr. Cowett's conversations with the defendants and others on these same subjects was received into evidence at trial, through Cowgill, Carr, Hubbard, Boucher and King.

24. Defendants claim Cowett could have testified as to the significance of the Fox-Raff sale, whether he was mislead about it and whether or not Raff ever complained that he had received promises from the defendants that have never been kept. (Armstrong aff. pp.29-30) On September 25, 1970, Raff sent Dickieson a letter detailing the promises which King and Boucher had made concerning the December 1968 transaction. On October 5, 1970, Dickieson sent a copy of this letter to Ray Merritt, one of the IOS Lawyers, which included the statement "Ed Cowett insists that he knows nothing on any of the arrangements of King, Boucher and Raff, and Ed's recommendation is that we sue forthwith". Copies of these documents

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are attached herewith. The significance of the Fox-Raff sale was evident from the figures on Carr's worksheet and nothing Cowett said could disprove the fact that without a revaluation based on that sale, the 1968 year-end Natural Resources account figures would show a valuation lower than cost.

25. Defendants claim that Cowett could have testified about his direct role in negotiating with a major oil company in the summer of 1969. Contrary to the defense allegation, the Government did not argue that such negotiations did not take place, but only that Cowett was not a participant. In any event, that particular subject was of no great consequence to the issues at trial and Cowett's Grand Jury testimony on the point was read to the jury. The Government did argue that King and Boucher mislead Cowett by Boucher's statement in his June 4, 1969 letter (DX S1) that a major oil company had offered approximately $5/acre for a 25% interest in the Arctic property. That letter clearly establishes that Cowett was getting his information on this point from Boucher and not from personal participation in negotiations.

26. Defendants further argue that Cowett could have assisted the defense by telling the jury the extent to which he received information about Canadian Arctic and other oil and gas properties from persons other than KRC. Presumably, such other persons could have been called to testify if in fact they existed. In any event, evidence as to Cowett's other sources about the Arctic could in no way mitigate or effect the issue of whether or not the defendants lied to FOF about Arctic side deals.

27. Defendants argue that it would have been helpful to have Cowett deny any agreement or understanding with King to offer Standard Oil substantial business from ICS or FOF in order to permit Standard Oil to recoup the $40,000,000 needed for the Aretic transaction. The Government never contended and never argued that Cowett had any such understanding and the thrust of our case was precisely the opposite. The Government contended that King's secret side deals were secret from Cowett and everyone else at the Fund of Funds and any use of FOF money to make payment on the secret side deals clearly would not have been communicated to FOF. There was certainly no proof indicating that FOF ever knew that the Bristol Bay properties it purchased from King Resources had been acquired by King Resources from COG only a month earlier.

28. Defendants contend that Cowett's testimony would be relevant on the question of whether at least 10% of FOF's Aretic interest had to be sold before the FOF board would have approved a revaluation. The documents and the testimony were uniformly clear that Cowett set the 10% minimum presumably influenced in part by his receipt of Carr's November 7 memorandum indicating that the Denver Arthur Andersen office considered 10% to be a "bare minimum". Hypotheticals as to what might have been acceptable to Cowett or anyone else would have been irrelevant because the fraud was effected in a factual context of a 10% requirement.

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29. With respect to explaining the extent to which IOS and CB would have benefited from the profitability of KRC's dealings with FOF, it is clear that other individuals affiliated with these entities could have provided the same information. Defendants claim that Cowett's testimony could explain that the Arctic revaluation "far from assuring KRC of a future FOF business, had the opposite effect". (Armstrong aff. p.36) The facts proved at trial with respect to the approximately $20,000,000 in payments made by FOF to KRC in the first six months of 1970 plus the anticipated prospect of the $300,000,000 new fund, clearly disproves this assertion. Although Cowett had told Boucher and King that the FOF could no longer acquire new natural resource properties in 1970, King Resources and Colorado Corp. continued to sell such properties (including Bristol Bay) to FOF during the first half of 1970.

30. Defendants also claim prejudice from specified "failures of recollection" by certain witnesses. The details cited are almost uniformly of little or no significance to the essential facts which were recalled by these witnesses. Many of these "failures of recollection" about precise dates or specific statements would have been equally present at a substantially earlier trial. Defendants' general claim concerning unavailable documents fails to specify any particular document whose loss was prejudicial.

31. In the absence of proof that the Government utilized the delay "as an intentional device to gain tactical advantage over the accused and that the defend was prejudiced thereby" defendants' motion to dismiss for lack of prosecution should be denied in all respects on the basis of

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the Second Circuit's recent decision in United States v. Rucker, et al., 2d Cir. (decided March 8, 1976) slip. op. p.2468, and for the reasons set forth in the Government's Memorandum of Law filed April 21, 1975 pp.2-6.

32. Defendants further move for a new trial claiming that a New York trial (as opposed to a Denver trial) deprived them of due process and effective assistance of counsel in that they "lacked effective access to virtually all of the relevant and potential witnesses and documents relating to the charges in this case." Defendants supporting affidavit is noticeably deficient in failing to specify any particular lack of access to any specific witness or document, and the fact is that the defense had far more access to relevant witnesses and documents in this matter than in the average criminal case.

33. This indictment was filed on January 20, 1975 and trial commenced on May 24, 1976. The defense had more than one year to prepare for the trial of this case. During that time King's attorneys traveled out of New York to interview witnesses and review documents in Denver (five separate trips), Houston, Chicago, Mobile, Fort Worth, Calgary, and Victoria, British Columbia. (See Reply Memorandum of Law in Support of King's Motion to Dismiss Indictment pp.9, 10 filed as Exhibit C to Bankruptcy Motion) Most of the Government's principal witnesses were interviewed by one or more of the five defense attorneys prior to their appearance on the witness stand. On information from the individual witness defense counsel interviewed Conwill, Lowry, Marriott, Hulsey, Dickieson, Hallman, Hardin, Hubbard, Carr, Booth and Cooper.

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Other witnesses such as Macom, Bennett King and Fredericksen advised me that they had had telephone conversations about the case with either King or Boucher. Moreover, defense counsel had the unusual advantage of being able to review prior to trial depositions which many of the Government's key witnesses gave in the State of Ohio civil action concerning the specific Arctic sales transactions involved in this case. These witnesses included Trueblood, Davis, Marriott, Lowry, Hulsey, Bennett King, Hallmen, Hardin, Carr, Hubbard, Dippe, Beens, Adams, Wiley, Gutjahr. I am also advised by Mr. Von Stein that the great majority of the individuals listed in paragraph 15 of Armstrong's affidavit told him that they were interviewed by one or more defense counsel prior to or during the trial. In short, the facts clearly refute any claim of "lack of access" to witnesses much less a claim that lack of access was occasioned by a trial in New York as opposed to Denver.

34. With respect to access to documents, commencing in August 1975, the Government provided discovery of what eventually amounted to approximately five file drawers of documents relating to the charges in this case including virtually all the Government exhibits offered into evidence. This discovery included all documents we obtained from the files of King Resources which files defense counsel claim they had difficulty in reviewing. Moreover, in the last month before trial, defense counsel were given even greater discovery which included access to all Arthur Andersen files, Macom's files, Lakeshore's files, all documents collected by the Deuseven Leisure investigation, IOS files, and other selected documents to the extent that such files and documents were in the possession of the United States Attorney's Office.

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35. A Denver trial would have posed other problems. When King initially sought a change of venue to Denver he did so with a specific reservation that he might seek to move to a third forum to avoid possible prejudicial publicity in Denver. According to information from John Kelly at the Denver SEC office one of the major Denver newspapers carried a substantial story on this trial virtually every day. Adding in Boucher's pre-trial severance motion it is clear that a move to Denver might well have resulted in two separate lengthy trials in two different locations.

36. Defense counsel claim great difficulty during the trial because it was not possible to talk "personally" with potential witnesses and it was "not feasible as it would have been had the trial been in Denver," readily to check matters with individuals who had information. (Armstrong aff. p.8) Since only 15 of the 40 government witnesses came from Denver the "personal" interviews might be limited in any event. Surely telephone communication must be regarded as an adequate substitute.

37. Defendants also claim they were unable to place potential witnesses under subpoena because they lacked the funds to advance travel expenses for the "30 or 40 individuals" in that category. At best, that claim is grossly misleading. We have been advised by Messrs. Fishman and Rodden that they appeared pursuant to defense subpoena without any receipt of travel expenses and it is most unlikely that these unknown "30 or 40 individuals" wouldn't agree to defer receipt of travel funds until they were actually required to travel. I was also advised by Mr. Richard Sadler

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who was involved in Macom's bankruptcy matter, that he traveled from Louisiana to New York in response to a defense subpoena and was subsequently told by defense counsel that they had decided not to use him. In sum, if the defense wanted to subpoena a witness they could have done so, and in fact they did so.

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38. Based on the foregoing facts and for the reasons set forth in the Government's Memorandum of Law and supporting affidavits filed April 21 and June 17, 1975 in opposition to defendants initial motion for a change of venue the present motion for a new trial should be summarily denied.

39. Defendant Boucher also seeks a new trial on the basis of alleged prosecutorial misstatements in summation. Most of the challenged remarks were made without objection and were either accurate statements of the trial record or fair argument based on that record.

40. The reference to the obvious fact that the defendants had been well defended and "were entitled to the best defense money could buy" (Tr. 4445) was a direct response to King's counsel's perorat'on suggestion that the defendants' "ability effectively to defend themselves" was questionable. (Tr. 4408). As a federal prosecuter, Boucher's counsel had no difficulty in making a similar reference to defendants' having "two of the finest lawyers in Wall Street" in his opening statement in United States v. Kahn, et al., 71 Cr. 1048, 472 F.2d 272 (2d Cir. 1973) (Appellants Appendix p.340a).

41. The facts do not support defendants' claim of misstatement on most of the other matters. The summation statements about what a "drill to earn" involved and the absence of any discussion about it were totally accurate.

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statements of the record. Dippo specifically explained that the buyer (Macom) under such a contract would "take all of the cost risk and expense of drilling his well" (Tr.4165). The April 10, 1970 standard representation letter was in fact substantially different from the two key representation letters signed by King and Boucher in that it was not focused exclusively on the Arctic sales and did not endeavor to negate guarantees or contingencies relating to those sales. King could not have learned of Marriott's February 19, 1971 letter to Frederickson from either Fishman who denied talking to King about it (Tr.2794) or Lowry who denied talking to anyone (including Boucher) about it (Tr.1467, 1455, 1475, 1476). The reference to MacKenzie's statement that the $15/acre price was ridiculous was expressly addressed to the issue of whether Boucher "thought that the price" ($15) represented "a fair accurate market value" at the time he said "those sales were good arms-length sales with no buy-back guarantee"(Tr.4457). The statement that the value of POF's natural resource assets to its shareholders charged from $11 a share to $2 a share after the spinoff was clearly supported by Conwill's testimony to that effect.

42. Defense counsel claims that without any support in the record I argued that the BP sale was kept secret to exclude POF from the sale whereas in fact POF actually participated in the sale. Although at the time I believed POF did not participate in that sale I have subsequently received information from Mr. Von Stein to the

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that his post trial investigation indicates FOF did participate in the BP sale under circumstances that are still unclear (apparently FOF initially resisted participation and never received any cash proceeds from the transaction.) However, a review of the transcript indicates that my summation comment on the matter was limited to the fact that the defendants' didn't disclose the BP sale negotiations to the FOF directors at the July 16 meeting in Rinfret's office when they were telling the directors that it was impossible to sell the Arctic. This comment was specifically supported by Schuyler's notes of that meeting which he read into evidence.

WHEREFORE, it is respectfully requested that defendants' motions be denied in all respects.

JOHN R. WING
Assistant United States Attorney

Sworn to before me this

day of August 1976.

NOTARY PUBLIC

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiffs,

v.

JOHN M. KING
A. ROLAND BOUCHER

Defendants.

AFFIDAVIT

75 Cr. 70 (MEF)

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) SS.:

STANLEY SPORKIN, being duly sworn, deposes and says:

1) I am an attorney, and since February 1974 have been the Director of the Division of Enforcement of the United States Securities and Exchange Commission ("SEC"). During 1970 and 1971, I held the position of Associate Director of the Division of Trading and Markets of the SEC. In that position and during that time, I had oversight responsibility for over approximately 400 investigations per year being conducted by the 9 regional SEC offices and the Washington Headquarters office. In that connection, there were approximately 114 attorneys, accountants, and other personnel who worked under my supervision in the Headquarters office investigating and litigating various violations of the Federal securities laws.

2) Recently, I have had presented to me memoranda prepared by the Denver Regional Office of the SEC relating to the interviews with Dr. Fredrickson on February 17 and March 10, 1971, and with Harry Cooper on March 16, 1971. All three memoranda indicated that a copy was sent to me in Washington. I have no specific recollection of receiving, reading or discussing any of these memoranda in 1971. However, in all probability, I did receive and read them

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at the time they were sent to me, in view of the fact that I had a strong interest in the Denver SEC office's investigation of John King and the King related companies. I have no recollection of giving instructions or directions to anyone in the Denver SEC office regarding these memoranda or regarding any matter described therein. During early 1971, the Commission had brought suit against King Resources Company ("KRC"), John King, Roland Boucher, and others and was investigating various substantial matters which eventually were referred to the United States Attorney's office in Denver for criminal prosecution of two different fraud cases.

3) In the Spring of 1975, AUSA, John R. Wing spoke to me regarding certain matters raised by defendants pre-trial motions in the above captioned case. At the time we discussed how the investigation came to be initiated in July 1973 and also the circumstances of a telephone call I had with Roland Boucher in June 1970. There was no discussion relating or referring to Frederickson or the above described memoranda, and I am positive I had no recollection of those memoranda at that time.

4) The circumstances surrounding the initiation of the investigation which led to the indictment in the above captioned case are generally as follows:

> In approximately June 1973, Martin Mensch, the newly retained attorney for Global Natural Resources Properties, Ltd. ("Global") reported to me that he was in the process of investigating the relationship between KRC and the Fund of Funds ("FOF") between 1968 and 1970 and had concluded that many serious Federal securities laws violations had occurred in connection with KRC's sale of oil and gas interests

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to FOF. He further stated that, in contrast to past counsel for IOS, he would give complete cooperation to the SEC including free access to documents within Global's control including FOF and KRC documents. Mensch stated that Global was in the process of filing a c aim against KRC in the bankruptcy court in Denver and he furnished us with a summary of his fraud charges against KRC as set forth in a June 22, 1973 letter to Judge Winner of the United States District Court in Denver. Copy attached as Exhibit 1. After receiving more information and some documents from Mensch, the SEC issued a formal order of investigation into the KRC-FOF relationship which eventually led to the indictment in this case. Order of investigation attached as Exhibit 2.

5) I categorically deny that I, or to the best of my knowledge, information or belief anyone else at the SEC intentionally delayed initiation of the Artic investigation sales transactions for any purpose of prejudicing the defendants or gaining some tactical advantage over them.

Stanley Sporkin

Sworn to before me this
29th day of July, 1976.

Notary Public, D.C.

My Commission Expires Dec. 14, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

Plaintiff, : 75 CR 70 (MEF)

-against- :

JOHN M. KING and A. ROWLAND BOUCHER, :

Defendants. :

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ALLEN G. SCHWARTZ, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York, having been admitted to practice in New York State in 1958. I submit this affidavit at the request of the United States Attorney for the Southern District of New York for the information of the court in the above matter.

2. During the year 1973, I was a member of the law firm of Dornbush Mensch Mandelstam & Schwartz, 22 East 40th Street, New York, New York. During the month of April, 1973, my firm was retained as attorneys for Global Natural Resources Properties Limited ("Global") in connection with the matter then pending in the United States District Court, Denver, Colorado entitled "In the Matter of King Resources Company and International Resources Limited, Debtors", Nos. 71-B-2921 and 72-B-644. Global, its subsidiaries and predecessors in interest, were claimants in the bankruptcy proceedings against the debtors above named.

3. During the month of May, 1973, I traveled to Denver and reviewed Global's files and interviewed various persons

having information relative to the claims which Global proposed to file in the proceedings referred to above. I was informed by various persons in Denver, including John D. Phillips, a member of the firm of Van Cise, Phillips and Goldberg, that an individual formerly employed by King Resources Company, Arman F. Frederickson, had important information relative to Global's claims in such proceedings. Specifically, Mr. Phillips informed me that his partner, Mr. Goldberg, had been told by Frederickson that Global's predecessor, FOF Proprietary Funds, Ltd., had been defrauded by King Resources Company and its officers, John M. King and A. Rowland Boucher, particularly with regard to the revaluation of properties in the Arctic and that Frederickson had documents relevant to that claim.

4. During the same month, May 1973, I was also informed by Harvey Baker, an employee of Natural Resources Corporation, a subsidiary of Global, that Frederickson, who had been Vice President and director of research for King Resources Company, an honest man, had knowledge of important matters relating to the dealings of Global and King Resources Company.

5. During the month of May, 1973, I asked Mr. Goldberg to speak with Dr. Frederickson and ask him whether he would agree to meet with me in Denver to discuss matters relative to the fraud referred to. Mr. Goldberg contacted Dr. Frederickson and arranged with me to meet with Frederickson at Goldberg's office on June 6, 1973.

6. On June 6, 1973, Dr. Frederickson met with me and Mr. Phillips at the offices of Van Cise, Phillips and Goldberg, Denver Club Building, Denver, Colorado. At the meeting, which began in the morning and extended through lunch, Dr.

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Frederickson informed me of, among other things, the fact that John Mecom had participated in the transaction which was later referred to in connection with the Arctic revaluation, in consideration of a commitment by King Resources Company to provide him with the initial monies to be deposited in connection with such transaction and to provide other monies in connection therewith. Dr. Frederickson told me that he had in his possession a letter and other documents which he showed to me which referred to an arrangement between King Resources Company by John M. King and Mecom. Dr. Frederickson showed to me a letter and other documents which referred to a side agreement to be signed by John M. King on behalf of King Resources Company.

7. Dr. Frederickson showed the documents to me with the understanding that I would not make copies of them at that time. I recall that he showed me a letter which had been sent to him some years earlier from an attorney, Neal Marriott and another letter or memorandum or copy thereof from Timothy Lowry which had annexed a proposed side agreement for the signature of John M. King. It is my best recollection that Dr. Frederickson mentioned, among other persons at King Resources Company familiar with or involved in the transaction referred to, one Bob Halsey.

8. I told Dr. Frederickson that I intended to bring to the attention of the Securities and Exchange Commission certain information, including the information related to me by Dr. Frederickson. Upon my return to New York, I conferred with my partner, Martin Mensch, and with representatives of Global and thereafter a conference was arranged with Stanley Sporkin, Deputy Chief of the Enforcement Division of the Securities and Exchange Commission to be held in Washington, D. C. on June 11, 1973.

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9. On June 11, 1973, Mr. Mensch, Mr. Phillips and I met with Mr. Sporkin and a member of Mr. Sporkin's staff at the offices of the SEC in Washington. On that occasion I informed Mr. Sporkin of information which I had acquired in Denver, including the information which had been related to me by Dr. Frederickson. Following the conference, I received a telephone call from Thomson Von Stein informing me that he had been assigned to this matter. On June 20, 1973, Mr. Von Stein and Mr. LaPrade, another employee of the Securities and Exchange Commission, met with me at my office and I related to them the information which had been communicated to me in Denver by Dr. Frederickson, together with other information.

10. I have been asked by the government as to whether I read any testimony given by John M. King or A. Rowland Boucher (or was present at the time such testimony was given) in connection with the bankruptcies of King Resources Company or John M. King. The answer to that question is that I did not and that all information which is referred to above was acquired from the individuals named at the times referred to.

Sworn to before me this
29th day of July , 1976.

ALLEN G. SCHWARTZ

Annette M. Dolce

ANNETTE M. DOLCE
NOTARY PUBLIC, State of New York
No. 03-0981355
Qualified in Bronx County
Commission Expires March 30, 197 7

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CABLE DORMENSTAM NEWYORK

June 22, 1973

Honorable Fred M. Winner
United States District Judge
United States District Court
19th and Stout Streets
Denver, Colorado 80202

Re: In the Matter of King Resources Company and International Resources, Limited, Debtors, Nos. 71-B-2921 and 72-B-644

Honorable Sir:

We are the attorneys for Natural Resources Corporation ("NRC"), a creditor herein, having filed claims in this proceeding on June 15, 1973. (For convenience, the claimant and its predecessor in interest, F.O.F. Proprietary Funds, Ltd. ("FOF"), is referred to as "NRC".) NRC asserts that it was the victim of a massive fraud perpetrated by King Resources Company ("KRC"), its affiliates and their officers and directors, and was damaged to the extent of approximately $78,000,000. We have advised the Court that in our view, the fraud on the part of KRC and its officers is clearly and convincingly supported by documents and records in the possession of NRC, which include copies of KRC documents and records, and can be attested to by witnesses who have personal knowledge of the supporting facts.

On June 14, 1973, your Honor directed us, as the attorneys for NRC, to submit to you, on or before June 25, 1973, a written statement summarizing the KRC fraud and indicating the nature and source of the supporting information. The Court stated that such information, to the extent that it had not been previously disclosed, should be promptly provided to the Trustee and to his attorneys.

Under normal circumstances, we would respectfully but

Exhibit 1

strongly resist the Court's direction since, as your Honor is aware, it may serve to prejudice our client's position to require it to provide more information than (a) is required to be contained in the claims themselves and the summary schedules prepared by S.D. Leidesdorf & Co. and (b) was disclosed in the Response to Trustee's Application No. 65, in advance of the time when such information would normally be disclosed. Out of respect for this Court and because the matters before it are of extraordinary importance to NRC, to its parent, Global Natural Resources Properties Limited ("Global") and to Global shareholders, we have labored to respond to your Honor's request. In addition, we believe the nature of the matter is such as to involve the public interest and, as we stated to the Court, we have advised the Securities and Exchange Commission (the "Commission") of our views and of the nature of the claims that have been filed in this proceeding.

We believe that NRC has conducted a sufficiently intensive review of the available documents and received sufficient information so that we are persuaded of the truth of the matters set forth below. The investigation is continuing and information contained in this letter may be supplemented, modified and corrected by information which may be obtained during the course of the continuing investigation.

We intend to comply with the Court's request that the information contained in this letter be provided to the Trustee and to the Trustee's attorneys. We have also been requested by members of the staff of the Commission to provide them with a copy of this letter. We have, therefore, provided a copy of this letter to counsel for the Trustee and to a member of the Commission staff. We have attempted to be cooperative but we are concerned that premature disclosure of the contents of this letter would prejudice not only our investigation but such investigations as may be conducted by others, including the Trustee and the Commission's staff. Accordingly, it is respectfully requested that this letter be retained in camera by the Court and that an order issue directing the Trustee, the Trustee's counsel and the Commission not to disclose the existence or contents of this letter (although the information contained herein may be used by the Commission staff, the Trustee and the Trustee's attorneys in any investigation either may conduct) until further order of this Court. We

respectfully request that we be given notice and an opportunity to be heard before the contents of this letter are made public. We have provided to the attorney for the Trustee the names of former employees of KRC who have supplied information to us relating to the matters set forth below.

1. Fraudulent Sale of Interests in Leases by The Colorado Corporation to KRC and by KRC to NRC. NRC asserts that among the frauds committed by KRC were those involving transactions in which The Colorado Corporation ("Colorado"), a corporation controlled by John M. King ("King"), acquired interests in leases at relatively modest prices and then promptly caused such leases to be sold to KRC at prices that were multiples of Colorado's cost. KRC then sold an interest in such leases to NRC at prices substantially in excess of that which KRC paid to Colorado. KRC had represented to NRC that NRC would bear that percentage of KRC's actual cost of acquisition and drilling which was equal to that percentage interest which NRC received. KRC was given discretion to acquire interests in leases on behalf of NRC and NRC relied on KRC in that respect. No disclosure was made by KRC to NRC of the original acquisition cost of such interests to Colorado or KRC or that sales were being made from "inventory".

The Highland River (British Columbia, Canada) prospect is illustrative. Colorado acquired a lease for $200,000. KRC acquired that lease from Colorado for $2,422,318. KRC then sold to NRC a 40% interest in the Highland lease for $2,664,550. (See Leidesdorf Summary, p.15.) The total undisclosed markup which was imposed on NRC, which was almost $2,500,000, was substantially in excess of 1,000% of the Colorado acquisition cost.

Another example is Freeze-Out Creek. On November 20, 1969, Colorado acquired its interest in Freeze-Out Creek for $516,478.75. Less than three weeks later, on December 9, 1969, Colorado proposed to KRC that it sell a 75% interest in Freeze-Out Creek to NRC for $1,127,453.75. On December 10, 1969, a 75% interest was sold to NRC for $1,240,200. Adjusting for the interest acquired, King succeeded in multiplying the acquisition cost of the interest by an approximate multiple of three in disposing of the interest to NRC a short twenty days after its acquisition by Colorado.

The story was repeated in respect of a property known as West Sweetville Prospect. On December 9, 1969, Colorado informed KRC that it had acquired oil and gas leases in that area at a cost of $202,000 and proposed that KRC sell to NRC a 75% interest in Colorado's position for $305,478. On the following day, December 10, 1969, Colorado and KRC entered into a written agreement in which KRC acquired a 75% working interest in Colorado's prospect for $222,710. KRC, five days later, sent a prospect summary sheet to NRC in which it advised of the acquisition and billed for acreage costs of $244,980. A further bill for well costs was rendered to NRC on this prospect in an amount of $90,000 and an invoice for completion intangibles in the amount of $22,000. Interestingly, Colorado, in its inter-office memo to KRC with respect to this prospect, had six days earlier proposed that the well costs were estimated at $75,000.

Once again, in connection with Northern Big Horn Prospect, Colorado advised KRC that it had acquired interests in certain acreage for approximately $400,000 and proposed to sell a 75% interest in such acreage to NRC for $662,717.80. One day after such proposal, KRC sold to NRC a 75% interest in such acreage for $728,550.

Fraud thus infected all of the transactions between Colorado, KRC and NRC. In all areas, Colorado acquired leases at modest costs which it then sold within a short period to KRC at outrageous markups, following which interests were sold by KRC to NRC at additional markups. NRC's costs for the interest purchased by it should have been $1,608,059. Instead, NRC was billed and paid a total of $9,135,005.

We note that this fraud might have remained secret had it not been for a fortuitous incident. In August, 1970, Keplinger and Associates ("Keplinger") of Houston, Texas, acting as consultants for NRC, were permitted access to records of KRC. In connection with their review of those records, Keplinger made copies of certain internal documents of KRC, including various documents which disclosed these transactions between Colorado and KRC. Keplinger did not see all of the documents with regard to all transactions between Colorado and KRC. The limited documents which they did see pertained to the properties identified above and disclosed this aspect of the massive fraud to which we have alluded. Copies of the documents have been analyzed by S.D. Leidesdorf & Co. and that firm's summary is contained in the Leidesdorf Summary.

2. Sales of Dry Holes. Evidence in the possession of NRC discloses that KRC acquired leases or interests in leases in its own name. KRC would then complete all operations, including exploration and drilling. When the work was completed (KRC having determined whether the well was either productive or dry), KRC allocated those wells, including the dry ones, to be sold to client accounts which KRC serviced. We are advised that an overwhelming number of dry holes were allocated to NRC without disclosure to NRC that drilling had been completed and the property found dry and abandoned.

The information upon which we base this claim was communicated to us by an individual, a former employee of KRC, who was intimately familiar with this aspect of KRC's operations, and appears in a novel entitled The Money Maker (Thomas Y. Crowell Company, New York, 1972) by John J. McNamara, Jr., a former high KRC executive. That individual informed us that his supervisor at KRC was Lewis R. McCann, who is apparently still in the employ of KRC, and that Mr. McCann's immediate superior was Mr. Boucher. Our informant detailed the scheme under which KRC would acquire leases and complete drilling and only after the results were in would Mr. Boucher direct Mr. McCann as to the allocation to be made of the properties.

3. Predating Authorizations for Expenditures to Conceal Fraud. The former employee of NRC referred to above informed us that the method of operation adopted by Mr. Boucher and Mr. McCann was as follows. After all results were in, KRC would cause this employee and another employee of KRC (whom we have interviewed on two separate occasions and whose name has been disclosed to counsel for the Trustee) to prepare authorizations for expenditures ("AFE'S") and prospect summary sheets for transmission to FOF and NRC. These documents show only that a lease had been acquired by KRC and were pre-dated to reflect a projected spud date. In fact, these AFE'S were prepared after drilling had been completed, and in numerous instances after wells had been found to be dry holes and accordingly abandoned. The AFE'S failed to disclose that the wells had been drilled and been found dry and had been abandoned. The former employee of KRC referred to above detailed the procedure whereby these AFE'S were pre-dated (apparently for concealment purposes). All of the AFE'S (devoid, incidentally, of the usual technical in-

formation an arms-length purchaser would expect to receive) were forwarded to NRC (actually, of course, in the first instance, to FOF) and payment was approved by Edward M. Cowett, who, for all practical purposes, managed FOF, and who merely initialled invoices for payment "O.K., EMC".

Information in our possession discloses that Mr. Cowett was the sole person who reviewed the invoices rendered by KRC and that no employee of FOF or NRC, including Mr. Cowett, ever saw any of the back-up data or information that would have supported the amounts set forth on the KRC invoices.

4. Overcharges on Lease Costs and Drilling Costs. As set forth above, NRC was to be billed by KRC in an amount equal to its proportionate share of the costs of KRC in connection with lease acquisition and drilling. When Keplinger went to the premises of KRC in 1970, they were given access to certain of KRC's internal records. These internal records included documents entitled "Authorization for Expenditures" (AFE's"). These AFE's, we are informed by the former KRC employee referred to, were prepared by professionals on the staff of KRC and represented its estimate of the costs to be incurred in connection with acquisition of leases and exploration and drilling. The persons preparing such AFE's were highly experienced and professional personnel whose estimates were exceedingly accurate and within a narrow margin of the actual costs incurred by KRC in connection with drilling. Keplinger was able to secure copies of approximately 60% of KRC's internal AFE's. These internal AFE's were then compared by the Leidesdorf firm with prospect summary sheets and invoices which KRC had rendered to FOF and NRC. The comparison showed that FOF and NRC had been billed and had made payment of enormous overcharges. In many instances FOF and NRC had paid amounts that not only exceeded their proportionate amount of the costs, but exceeded the total amount of all lease costs and drilling costs. These overcharges are detailed in summary sheets supported by voluminous exhibits filed by NRC in connection with its claims.

NRC has learned that in many instances KRC billed and was paid by NRC for costs that KRC never incurred or never remitted to vendors or suppliers. For example:

(a) In connection with a copper prospect known as the PN Prospect in British Columbia, Canada, KRC submitted

an invoice and was paid $1,137,000, which was remitted to Colorado. In fact, neither Colorado nor KRC ever acquired an interest in the Prospect and fraudulently dissipated the NRC monies received.

(b) The amount of $492,719 was paid by NRC to KRC as NRC's pro rata share of work deposits required on jointly owned Arctic Island P & NG permits required by the Receiver General of Canada. KRC made a non-cash deposit for the entire amount required and has never returned the funds advanced by NRC.

5. Failure to Disclose Burdens on Properties. KRC acquired interests in permits on certain properties in the Arctic. In connection with certain of these permits, KRC sold a 50% interest therein to NRC and failed to disclose that the permit holder had a 3% overriding royalty convertible into a 12% working interest. The effect of the foregoing is that NRC believed that it had acquired a 50% interest when in fact its interest was subject to reduction. In addition, in connection with approximately 70% of the Arctic properties, KRC represented that they owned the permits. In fact, KRC only had a farm-out on the permits, which, as the Court may know, is an option that requires monies to be spent before an interest can be acquired in the permit. KRC sold interests in these permits to FOF and NRC and never disclosed the fact that money had to be spent by NRC before an interest could actually be obtained in the permit. These non-disclosures permeated many of the transactions between KRC and FOF and NRC. KRC failed to disclose farm-outs and the commitments that had to be met before interests could be acquired. The result is that NRC spent enormous sums of money in drilling and exploration without actually having any interest in the permit that it thought it had acquired.

6. Drilling Costs Where There was Never any Drilling. In connection with five wells in Canada and in the United States, NRC and FOF were billed for drilling costs and drilling was never done. NRC has requested the return of this money, approximately $200,000, and KRC has taken the position that if there was a wrong, the wrong was committed by Colorado. In fact, NRC received invoices from KRC and paid KRC. KRC has contended that it submitted invoices only as an accommodation to Colorado.

7. KRC sold to FOF interests in properties in the United States and Canada. KRC was paid the full amount of

the invoices rendered in respect thereto. KRC for a substantial period of time arbitrarily refused to provide to NRC a written conveyance of the interests so purchased by NRC and in respect of a number of such interests, still refuses to provide the appropriate conveyances. In many cases, liens were imposed prior to the time the properties were conveyed by KRC to NRC and accordingly, NRC was damaged to the extent that they received such properties burdened by liens. (See par. 11 below.)

8. Fraud in Connection with Two Sales by KRC to Sun. As the Court is aware, KRC made certain sales to Sun Oil and its affiliated companies. In connection with these sales, KRC gave to Sun certain rights of first refusal and restricted the right of NRC's parent company to deal in properties in which it had acquired an interest from KRC. Further, KRC received from Sun payment for geological and geophysical data and retained all proceeds, although the cost therefor had been billed to and paid by FOF and NRC. KRC never remitted our clients' proportionate share of these proceeds.

The Court may, in addition, be aware of the fact that when KRC turned over to Sun all of its obligations in the Arctic, KRC committed the interests of NRC and of its parent to a most burdensome agreement. The agreement contained a massive forfeiture clause which Sun alleged would wipe out the interest of NRC's parent, Global. KRC had made an effort to induce Global to participate in the sale to Sun, but was rejected. Although KRC did not sell to Sun the interest of our clients, it did, nonetheless, commit those interests to onerous operating provisions and to the possibility of forfeiture without our clients' consent. The net result of the improper and burdensome transaction between KRC and Sun was that our clients were saddled with enormous work obligations. Prior to KRC's transactions with Sun KRC was obligated to bear 80% of the gross costs in connection with the Arctic properties until $20 million of work had been completed. After netting out certain interests, our clients' costs were supposed to have been only 10% of the total cost load. After the Sun transactions had been made by KRC, and after KRC had defaulted, our clients were compelled, in order to avoid forfeiture, to go to Sun and were able to be relieved of the forfeiture only by agreeing to pay to Sun 45% of the work obligations (when the work obligations should only have been 10%, as set forth above).

9. Failure to Disclose Contract. KRC entered into a gas purchase contract with Northern Natural Gas ("Northern"), giving Northern the right to purchase all of the gas produced from leases of KRC in which NRC owned interests in the Huapache area of New Mexico. KRC failed to disclose this agreement to NRC at the point in time when an agreement was made with KRC dividing up the property. Indeed, this fact was not disclosed even up to December 1972, when our clients learned of Northern's contract by contacting Northern directly. KRC had represented to our clients that the Northern agreement was to be merely a sale of an override. In connection with a certain settlement made with the Trustee heretofore, even the Trustee did not disclose this Northern interest. We believe that the likelihood is that the Trustee never knew of the existence of Northern's contract, probably because certain personnel in KRC withheld this information from the Trustee.

10. Fraud in Acquisition of Arctic Permits. As set forth above, FOF and NRC were to bear their proportionate share of KRC's actual costs in connection with the acquisition of interests in permits and leases. KRC acquired permits and leases in Arctic property by payment of minimal out-of-pocket filing charges. In connection with these properties, KRC billed to FOF and NRC and was paid approximately $11 million for a 50% interest in KRC's total position. KRC failed to disclose the fact that KRC had paid only minimum out-of-pocket filing fees and attorneys charges. In connection with a property called Strathcona on Baffin Island, KRC filed on a number of permits at a nominal cost to KRC. The permits gave to KRC the right to perform certain work. Within a three-month period, in two separate sales, KRC sold to our clients a 50% interest in those permits for $10 million. Our clients not only paid the $10 million, but thereby assumed obligations for 50% of the work to be performed. All of the payments were made without disclosure on the part of KRC as to the minimal costs incurred by KRC in acquiring the permits or of the fact that our clients now had acquired for $10 million the obligation to pay for 50% of the work to be done.

11. Failure to Pay Materialmen and Mechanics, Resulting in Liens on our Clients' Interests. Liens were filed on interests of our clients in connection with leases in Texas. NRC had paid to KRC for lease costs and drilling costs. KRC failed to pay materialmen and mechanics who had performed work

on these properties. Accordingly, liens were filed which became effective against the interests of our clients as well as against the interests of KRC. NRC was compelled to enter into agreements with these lienors to pay off approximately $385,000 of liens. It should be noted that these payments were made by NRC after NRC had already paid more than its share of the costs of drilling and lease acquisition. In effect, therefore, our clients had made payment to KRC for costs that were billed and, apparently, KRC failed to use the payments for the purpose intended. KRC failed to disclose to our clients that KRC had not paid these materialmen and mechanics. KRC, by its invoice, had represented either that KRC had paid the materialmen and mechanics or that it would use the funds of our clients to do so.

12. Sale of Interests in Acreage and Failure to Remit Proceeds. KRC sold to FOF and NRC interests in certain acreage (Huapache) in New Mexico. NRC paid KRC for these interests in the acreage but KRC in fact never purchased the acreage but did retain NRC's money.

13. Equipping Wells and Salvage. We are informed by employees of NRC as to another possible fraud, the facts of which have not yet been fully determined. (Indeed, many of the matters set forth above will be the subject of discovery, which has already been initiated by certain filings on behalf of our clients on June 15, 1973 and during the week of June 18, 1973.) We are advised that in connection with certain wells, KRC completed the wells and in so doing, equipped the wells. We have been informed that KRC, in connection with the wells to which we refer, either failed to salvage the equipment used, as required, or salvaged the equipment and failed to remit to our clients their share of the salvage proceeds, or failed to pay materialmen and mechanics who foreclosed on the equipment and, as a result, our clients lost their share of the salvage value. It should be noted in connection with these costs that our clients were billed and had made payment therefor and were entitled to their share of the proceeds of the salvage operation.

We wish to make clear to the Court that the matters referred to above have been brought to our attention as indicated by former employees of KRC and by present employees of NRC or are reflected in documents which we have been able to

acquire. We do not represent to the Court that our claims are limited solely to the matters referred to above. Moreover, we intend to actively pursue the discovery to which we are entitled under the Federal Rules of Civil Procedure and the Bankruptcy Act in order to prepare properly for the trial of the claims referred to. In connection with our efforts to prepare our case, we will be actively interviewing prospective witnesses, including present and former employees of KRC and FOF, and others. We believe that publication of the contents of this document may severely impede us in the preparation of our case by inhibiting witnesses and by encouraging, by indirection, possible alteration or destruction of available documentation. Moreover, the Trustee's investigation under Section 167 of the Bankruptcy Act may be impeded. Further, we have been advised, as we have indicated above and to your Honor in chambers, that investigations are under way by the Government which may, in addition, suffer as a result of premature disclosure. Therefore, we urge the Court to retain this document in camera and to make no disclosure either to the public or, indeed, to any present or former officers or employees of KRC, including those individuals whom we have identified in Court.

We wish, further, to make clear to the Court our intent to cooperate with the Court and with the Referee in any manner that the Court may require in an effort to expedite the proceedings herein.

Respectfully submitted,

DORNBUSH MENSCH MANDELSTAM & SCHWARTZ

By: /s/ Allen G. Schwartz

VAN CISE, PHILLIPS & GOLDBERG

By: /s/ John D. Phillips

xc: John S. Pfeiffer, Esq.
of Gorsuch, Kirgis, Campbell,
Walker & Grover

Thomson von Stein, Esq.
Securities and Exchange Commission

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THIS ORDER IS AN ORDER DIRECTING A PRIVATE OR NON-PUBLIC INVESTIGATION AND IS BEING FURNISHED TO YOU AT YOUR REQUEST FOR YOUR OWN USE.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

July 24, 1973

In the Matter of

FUND OF FUNDS LTD.
KING RESOURCES COMPANY

File No. HO-669

ORDER DIRECTING A PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. The securities of King Resources Company ("KRC") are registered with the Commission under Section 12 of the Exchange Act and are traded on the over-the-counter market.

B. John M. King ("King") owns approximately 16% of the outstanding stock of KRC and until August 13, 1970 was Chairman of its Board of Directors.

C. Fund of Funds ("FOF") is an open end mutual fund incorporated in Canada with shareholders throughout the world. Its management company, FOF Management Co., Ltd., is a subsidiary of the IOS Ltd. ("IOS"). Both are defendants in S.E.C. v. Robert L. Vesco et al., 72 Civ. 5001, U.S.D.C., SDNY, filed November 27 1972.

II

Members of the staff have reported to the Commission information which tends to show that:

A. From on or about January 1, 1968 KRC sold to FOF and its subsidiaries securities, including undivided interests in oil and gas properties.

B. KRC, IOS, FOF, their officers, directors, and others participated in the sale, valuation, and reporting of such securities. Such securities were incorporated in the public valuation and reports of FOF. In 1970, certain assets of FOF, including those purchased from KRC, were placed in a newly formed English non-resident corporation named Global Natual Resources Properties Ltd. ("Global").

C. While engaged in the offer, purchase, and sale of such securities and of its shares; KRC, IOS, FOF, their officers, directors, employees, John M. King, Rowland

Exhibit 2

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Howard M. Cowett and others made untrue statements of material facts and have omitted to state and are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things; (1) the value of shares of FOF, and (2) the value, productivity, and merit of the securities sold by KRC.

D. From on about January 1, 1968 KRC, IOS, their officers, directors, employees John M. King, Rouland Boucher Howard M. Cowett and others employed devices, schemes and artifices to defraud and engaged in transactions, acts, practices, and courses of business which may have operated as a fraud and a deceit upon the public and FOF in connection with solicitations to purchase, purchases, and sales of the securities mentioned in paragraph II above and shares of FOF in that, among other things, (1) the above named persons obtained money from FOF and FOF shareholders through misrepresentations and omissions to state material facts and concealment of material facts concerning the nature, quality, and value of the securities sold to FOF and its subsidiaries including undivided interests in oil and gas properties, (2) the above named persons participated in acts which misrepresented such securities, and (3) as a part of the scheme, FOF established Global, placed in Global such securities, and distributed Global's shares to shareholders of FOF.

E. While engaged in the offer, sale and delivery of said securities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

III

The Commission having considered the foregoing, deems it appropriate and necessary and for the protection of investors that a private investigation be made;

1. to ascertain the facts concerning the matters set forth in paragraph II above, and

2. to determine whether there have been possible violations of Section 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IT IS ORDERED, pursuant to the provisions of Section 21(a) of the Securities Exchange Act of 1934, that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage in any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Securities Exchange Act of 1934, that for the purpose of such investigation, Donald J. Stocking, Joseph F. Keys, John J. Kelly, Jr., Robert Laprade, Thomson von Stein, James E. Sims, and Jerald Lamotti and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Ronald F. Hunt
Secretary

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AFFIDAVIT

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

I, John J. Kelly, Jr., being duly sworn on my oath, depose and say:

I am an attorney employed on the staff of the Denver Regional Office of the United States Securities and Exchange Commission and have been so employed since January 1962.

On August 26, 1970, the Securities and Exchange Commission (Commission) issued a formal order of investigation and pursuant to that order of investigation, I, Joseph F. Krys, and other employees of the staff of the Denver Regional Office of the Commission investigated a number of matters involving John M. King and various King related companies. A copy of the formal order is attached. The investigation concerned, among other things, matters relative to the attempted takeover of IOS by John M. King, possible misappropriation of corporate funds in that connection, false and misleading projections of King Resources Company's revenues and earnings and matters involving the sale of limited partnership interests to members of the public by King's Imperial-American Resources Fund, Inc. and Royal Resources Exploration, Inc. The Arctic transaction was not a subject matter of the formal order. This investigation, after a 2-1/2 year period, resulted in two criminal reference reports which were referred to the United States Attorney's Office in Denver. In the interim, the Commission filed a complaint for injunction in the United States District Court for the District of Colorado against King, Boucher, and others alleging fraud, in part, relating to the IOS takeover attempt. These criminal reference reports which I understand have been submitted to the court recommended criminal prosecution of King, A Rowland Boucher and others for two different frauds. The investigation conducted by the Denver Regional Office during the period 1970 to 1972, and the criminal reference reports which resulted from that investigation were not concerned with the Arctic transactions of December 1969, or any fraud on the Fund of Funds in relation thereto. When our office questioned King and Boucher in 1970 in connection with our investigation no inquiry was made concerning the Arctic transactions.

In February and March 1971, I had interviewed Dr. Armand Frederickson and obtained certain information in part relating to the Mecom Arctic sale. Those interviews were brought about as a result of Dr. Frederickson's calling me and indicating he had some information relating to the matters we were then investigating. Copies of memoranda of interview with Dr. Frederickson and the subsequent interview with Harrison Cooper, according to the file, were sent to Commission officials in the Divisions of Trading and Markets and Corporation Finance in Washington, D. C. While I have no recollection of any specific reason for sending these copies to the Commission officials in Washington, it was probably for information purposes in view of the fact that Mr. Sporkin in the Division of Trading and Markets had previously expressed an interest in the King investigation we were conducting, and his Division had reviewed various matters in connection with that investigation from time to time. The Division of Corporation Finance had the obligation to review the required Commission filings of King Resources Company and other King related companies. I do know that in the course of our investigation of Mr. King and his companies, copies of other materials, other than the Frederickson and Cooper memoranda, were forwarded to Washington officials in those Divisions.

I am positive that I received no reply to the Frederickson or Cooper memoranda and that I received no request or instruction to investigate the matters stated therein. I am not aware that anyone else in the Denver Regional Office received any such reply or instructions in the years 1971 or 1972.

I also recall that my primary interest in Frederickson's information about the Mecom transaction was that it might constitute an example of King's method of operation and therefore might be the type of activity we might find in our investigation of King's drilling funds. My memorandum referring to the February 17th interview indicates that Frederickson specifically was asked if he was aware of any transactions which King or King Resources Company had with the drilling funds in which the Mecom style of fixing the market prices was used. Ultimately we did discover the so-called Lark transaction which was similar to the

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Macom deal. Although Frederickson suggested that the Consolidated's Arctic sale had also been based on secret side deals, Cooper subsequently contradicted Frederickson's statements. Moreover, I had interviewed Harry Trueblood in June 1970 about the State of Ohio loans and the Arctic transaction and at that time I had received no information indicating that Consolidated's Arctic transaction was influenced by any side deals. Following the interviews with Frederickson and Cooper and a review of the documents they furnished, neither I, nor anyone else to my information at the Denver Regional Office of the Commission, investigated the December 1969 Arctic transactions or any fraud perpetrated on the Fund of Funds in connection with those sales in the years 1971 and 1972. A major reason I did not recommend initiating or conducting an investigation of the Arctic transactions at that time was due to the fact that the Denver Regional Office was already investigating King, Boucher and others in connection with other substantial matters and had already committed a substantial amount of time and effort on those other matters. I categorically deny that I deliberately or intentionally delayed an investigation of the Arctic sales in order to cause any disadvantage or prejudice to King or Boucher.

To the best of my knowledge, information, and belief, no one else at the Denver Regional Office deliberately or intentionally delayed an investigation of the Arctic sales in order to cause any disadvantage or prejudice to King or Boucher.

/s/ John J. Kelly, Jr.
John J. Kelly, Jr.

Subscribed and sworn to before me this 28th day of July, 1976.

/s/ Martha A. Ervin
Notary Public

My commission expires:
June 22, 1977

(SEAL)

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

AUG 26 1970

In the Matter of

JOHN M. KING
THE COLORADO CORPORATION
THE DENVER CORPORATION
IMPERIAL-AMERICAN MANAGMENT COMPANY
IMPERIAL-AMERICAN RESOURCES FUND, INC..
ROYAL RESOURCES CORPORATION
ROYAL RESOURCES EXPLORATION, INC.
KING RESOURCES COMPANY
DENVER SECURITIES CORPORATION
REGENCY MANAGMENT COMPANY
REGENCY INCOME COMPANY
REGENCY INVESTORS COMPANY
GENERAL AMERICAN DEVELOPMENT CORPORATION
K-R FUNDS, INC.

File No. D-1407

ORDER DIRECTING EXAMINATION AND PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. The Denver Corporation ("Denver"), a corporation with its principal place of business at Brooks Tower Building, Denver, Colorado, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") since September 8, 1966.

B. Denver is a member of the National Association of Securities Dealers, Inc., a national securities association, registered pursuant to Section 15A of the Exchange Act.

C. The securities of King Resources Company ("King Resources") are registered with the Commission under Section 12 of the Exchange Act and are traded on the over-the-counter market. On January 15, 1970 King Resources filed a registration statement on Form S-1 under the Securities Act of 1933, as amended (Securities Act") (File No. 2-35991) relating to a proposed pledge of 300,000 shares of common stock by certain shareholders to Dempsey-Tegeler & Co. Inc.

D. John M. King ("King") owns approximately 16% of the outstanding stock of King Resources and until August 13, 1970 was Chairman of its Board of Directors.

E. K-R Funds, Inc. is a wholly-owned subsidiary of King Resources which also manages the investment programs of K-R Funds, Inc.

F. Imperial-American Resources Fund, Inc. ("Imperial-American Resources") is a wholly-owned subsidiary of Imperial-American Management Company ("Imperial-American Management") which manages it and, which, in turn, is a wholly-owned subsidiary of Colorado Corporation ("Colorado"). Imperial-American Resources filed a registration statement on Form S-1 under the Securities Act (File No. 2-35163) on October 25, 1969 covering a proposed public offering of $250,000,000 of oil and gas participation plans, investment contracts and pre-organization subscriptions in limited partnerships. The registration statement was declared effective on June 15, 1970.

G. Royal Resources Exploration, Inc. ("Royal Resources Exploration") is a wholly-owned subsidiary of Royal Resources Corporation which, in turn, is a wholly-owned subsidiary of Colorado. Royal Resources Exploration filed a registration statement on Form S-1 under the Securities Act (File No. 2-35903) on December 31, 1969 covering a proposed public offering of $100,000,000 of oil and gas participation plans, investment contracts and pre-organization subscriptions in limited partnerships. The registration statement was declared effective on May 1[illegible] 1970.

H. Denver is a wholly-owned subsidiary of Colorado which, in turn, is controlled by King.

I. King Resources has failed to file with the Commission certain reports required to be filed pursuant to Section 13(a) of the Securities Exchange Act

II

Members of the staff have reported to the Commission information which tends to show that:

A. King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration, King Resources, Denver Securities Corporation Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc. and others have been and are offering to sell, selling and delivering after sale to members of the public certain securities, namely, the securities of King Resources, Imperial-American Resources and Royal Resources Exploration.

B. While engaged in the offer, purchase and sale of certain securities, namely oil and gas participation plans, investment contracts and pre-organization subscriptions issued by Imperial-American Resources and Royal Resources Exploration, King, Colorado, Denver, Imperial-American Managment, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration, King Resources, Denver Securities Corporation, Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc. and others have been and are making untrue statements of material facts and have omitted and are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things:

1. The safety of an investment in said securities;
2. The value of said securities; and
3. The ability of the purchasers of said securities to obtain the redemption value thereof.

C. King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration King Resources, Denver Securities Corporation, Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc., and others employed devices schemes and artifices to defraud and engaged in transactions, acts, practices and courses of business which operated as a fraud and a deceit upon the public in connection with solicitations to purchase, purchases and sales of said securities.

D. While engaged in the offer, sale and delivery of said securities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

E. Colorado and others, directly and indirectly, effected transactions in and induced and attempted to induce the purchase and sale of securities at a time when Colorado was not registered with the Commission as a broker-dealer as required by Section 15(a) of the Exchange Act.

F. From on or about July 1, 1970, Denver and Colorado, directly and indirectly, effected transactions in and induced and attempted to induce the purchase and sale of securities at a time when the aggregate indebtedness of Denver and Colorado to all persons may have exceeded 2,000 per centum of their respective net capital, computed in accordance with the provisions of Rule 15(c)(3)-1 promulgated under Section 15(c)(3) of the Exchange Act.

G. The registration statements of King Resources (referred to in Paragraph IC above) of Imperial American Resources (referred to in Paragraph IF above) and of Royal Resources Exploration (referred to in Paragraph IG above) contain untrue statements of material facts or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading with respect to:

1. Item 9, Description of Business; and
2. Item 20, Interest of Management and others in Certain Transactions.

III

The Commission having considered the foregoing, deems it appropriate and necessary that an examination and private investigation be made for the following purposes:

1. to ascertain the facts concerning the matters set forth in paragraph II G with respect ot King Resources;

2. to determine with respect to King Resources whether an order under Section 15(c)(4) of the Exchange Act should issue;

3. to determine whether there have been possible violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b); 15(a), 15(c)(3) of the Exchange Act and Rules 10b-5 and 15c3-1 thereunder.

IT IS ORDERED, pursuant to the provisions of Sections 8(e) and 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934, that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage in any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 19(b) of the Securities Act of 1933 and Section 21(b) of the Securities Act of 1933 and Section 21(b) of the Securities Exchange Act of 1934, that for the purpose of such investigation, Donald J. Stocking, Joseph F. Krys, John J. Kelly, Jr., John E. Jones, Donald N. Malawsky, Edward J. Leavitt, Ralph H. Tracy, Richard B. Nesson, Leonard H. Rossen, Theodore Levine, James E. Newton, John W. Fegan. James E. Sims and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Orval L. DuBois

Orval DuBois
Secretary

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FOX-RAFF & COMPANY

September 25, 1970

Mr. Bruce B. Dickieson
Investors Overseas Services
119 Rue de Lausanne
1211 Geneva, Switzerland

Dear Mr. Dickieson:

At the time that we purchased the Shell-Sealy-Smith wells and the uranium package from Natural Resources I was told by John King and Rowland Boucher that the first investment of some $83,000 would be all that I would be required to pay and that the uranium was in the process of being sold, the proceeds from which would pay off our entire obligation to you. Obviously, the uranium has not been sold and we have, since the initial investment, made an additional payment to you of some $185,000. We are now being asked to pay an additional $130,000 plus to close out this account.

I feel very strongly that the manner in which this package was being sold to us, obviously for valuation purposes of I. O. S., and the promises of liquidation of uranium require me to take other steps to alleviate this financial liability which we have with you.

As you are well aware through your intimate communications with such brokerage houses as Arthur Lipper and others in the U. S., we have all been under severe financial strain over the past eighteen months and we are, frankly, unable to complete this payment to you, particularly under the circumstances under which we purchased these properties.

Our counsel has repeatedly been in communication with counsel for King Resources and there has been no response. I suggest that you communicate directly with King Resources in order for us to amicably settle this transaction. I am sure that you feel, as we do, that we do not wish to disturb already muddy waters with our good friends in Denver, but if there is persistence on this transaction, we shall have no other recourse than to instruct our counsel to take whatever steps are necessary to relieve us from the pressure of our obligation to you.

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FOX-RÄFF & COMPANY

I am, of course, anxious to hear from you and to get your views on the content of this letter, but I do suggest that at this point legal action by your organization might provoke disturbing occurrences in Denver and possibly additional negative public relations in Geneva. Let me hear from you at your earliest convenience.

Very truly yours,

R. L. Raff

Robert L. Raff
President

RLR:jdw

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Mr. Raymond W. Marriott
Willkie Farr and Gallagher
1 Chase Manhattan Plaza
New York, NY

October 9, 1970.

Dear Ray,

You have already received my September 19 letter to Bob Raff. Enclosed is his reply, together with my reply to his reply.

Ed Cowett insists that he knows nothing of any arrangements between Fang, Boucher, and Raff and Ed's recommendation is that we sue forthwith.

Sincerely,

Bruce Dickieson

BBD/jb

cc: Rowland Boucher)
Ed Cowett)- with enclosure

RETYPED FROM FAINTLY LEGIBLE COPY BY U.S. ATTORNEY'S OFFICE ON 8/2/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : REPLY AFFIDAVIT

JOHN M. KING and A. ROWLAND BOUCHER, : 75 Cr. 70 (MEF)

Defendants. :

- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL F. ARMSTRONG, being duly sworn, deposes and says:

1. I am a member of the firm of Barrett Smith Schapiro & Simon, attorneys for the defendant John M. King in the above-entitled action. I am familiar with the facts and prior proceedings herein.

2. This affidavit is respectfully submitted in reply to the Government's response to defendants' post-trial motions to dismiss the indictment, to set aside the verdicts and for judgments of acquittal or, in the alternative, for a new trial.

MOTION BASED ON PREJUDICIAL DELAY

3. The Government claims that: the major transaction upon which the prosecutor relied at trial was of little consequence; the United States Government did not have the resources to investigate this case because it was too busy investigating two others of greater promise and importance -- in which indictments were never returned and; the information

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given to the Government by Armand Frederickson in 1971 was insufficient to begin an investigation -- until the same information was again submitted in 1973. The Government apparently finds no embarrassment in arguing that they had no reason to go forward in 1971 while simultaneously arguing (in opposition to defendants' motions based on their bankruptcy testimony) that all necessary investigative leads were available prior to that time.

4. The Government's contention (Wing Aff't p. 3) that Frederickson's allegations involving the "Mecom side deal" were not worth investigating because they did not provide the SEC with the "total picture of the fraud charged in the instant case" is preposterous. The Government conjures up a "mosaic of proof" which was supposedly necessary in order to initiate an investigation and offers as the only examples of such proof: Arthur Andersen representation letters and records from the KRC Calgary office which were as available in 1971 as they were in 1973 to an investigator interested in requesting them; C. Harrison Cooper's diary notes, which could have been obtained by the SEC when they interviewed Cooper in 1971 simply by asking Cooper for them; facts regarding two unrelated transactions of an allegedly similar nature (Fox-Raff and Standard Oil) and; summary testimony based on public information and KRC records. The Government's position seems to be that even though the SEC failed to investigate specific allegations describing the two central transactions in the case, it should be excused for this failure because it also neglected to investigate other peripheral matters.

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5. When the SEC finally got around to investigating the case in 1973, they seemed to have no need for the "mosaic" to which the prosecutor refers. SEC attorney Thomson von Stein, in his affidavit in opposition to defendants' motions regarding possible misuse of their bankruptcy testimony, sets forth in detail the alleged sources of all the proof he collected, not merely the leads that caused him to search for it. (See von Stein Aff't pp. 2-5). The entire collection o documents, news articles, books, investigative reports and, most significantly, the Frederickson interview memoranda, were in existence and readily available to the SEC by early 1971 and von Stein had actually examined much of it by then. According to von Stein, these materials:

> "provided the starting point for my investigation, were the bases of the areas into which inquiries were made, and led to all the witnesses and other evidence that were presented to the grand jury in this case." (von Stein Aff't p. 6, emphasis supplied)

6. The information was not pursued, however, until June 11, 1973, when Stanley Sporkin received information from private attorneys who had been investigating the case during the period of governmental inaction. (Sporkin Aff't pp. 2-3). The affidavit of Allen Schwartz who, with his partner Martin Mensch, spoke to Sporkin, reveals that they had received their information, insofar as it related to the charges ultimately brought in this case, from the same source that Sporkin had 2 1/2 years earlier -- Frederickson. (See Schwartz affidavit, submitted by the Government in connection with the bankruptcy motion). Mensch and Schwartz actually recommended that the SEC interview Frederickson (von Stein aff't in bankruptcy motion p. 9).

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7. Von Stein, then working in the Washington SEC office, was assigned to work on the case and immediately zeroed in on the memoranda of Frederickson's 1971 interviews (von Stein Aff't p. 6, von Stein aff't in bankruptcy motion p. 4). According to the prosecutor, "one of the first things [von Stein] did was get this thing [the copy of the alleged buy back agreement] from Frederickson . . ." (Tr. p. 2735). I am informed by the prosecutor that von Stein worked alone on this case and did so while handling another major investigation at the same time. Nevertheless, with the evidence neatly laid out, it took only a year and one-half to complete the SEC and grand jury investigations and obtain an indictment.

8. The Government concedes "the simple fact is that the SEC did not initiate such an investigation [into the 1971 Frederickson allegations] . . ." (Wing Aff't p. 4). The prosecutor offers, in explanation of this inaction, "the perfectly legitimate reason" that the Denver SEC office was busy with two other investigations relating to King (id.) and, consequently, "the Arctic was sort of left in a side box and not pursued" (Tr. p. 2735). The Government does not and cannot explain why it could not have proceeded with an investigation conducted by a Washington attorney in a case referred to New York simply because two "completely separate" investigations were in progress in Denver. Had von Stein begun his part-time efforts in 1971, they could easily have been integrated into the closely related Denver investigations -- to the advantage of both. The SEC's decision not to take this step, for whatever reason, represented a tactical decision for which the Government must be held accountable when the result is prejudicial delay.

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9. The SEC was not the only culpable governmental agency. In addition to the facts previously set forth, the defendants have uncovered further information of the Government's early knowledge with respect to the basic allegations in this case. (This information was not fully developed until now, but Mr. Wing was informed of the relevant facts and witnesses on Friday, July 30, 1976). On April 13, 1972, Neal Marriott telephoned Jack Pfeiffer, Trustee in Bankruptcy for King Resources Company, and made charges relating to the arms-length nature of the Mecom transaction. (Pfeiffer Aff't, attached hereto as Exhibit A). Pfeiffer's notes of the conversation read: "cancelled check, Royal Resources, Geo. Hardin, Bob Hulsey, Xmas Eve '69, Dr. Frederickson, Tim Lowry." (emphasis in original). Pfeiffer called Judge Fred T. Winner, United States District Judge, District of Colorado, and a conference was arranged with James Treece, the United States Attorney. Pfeiffer explained the allegations in detail to Mr. Treece in a conference which lasted 1 to 1-1/2 hours. Mr. Treece took notes. I have spoken on the telephone with Judge Winner, who confirmed the accuracy of Mr. Pfeiffer's recollection of the events in question. I have also spoken to Mr. Treece, who informed me that he recalls the meeting having lasted only five minutes. He said that he passed on the information to the Denver postal inspector (whose name he did not recall) and was told that the Government already had the information. Mr. Treece did nothing further and believes that he destroyed his notes. I called the postal inspector in Denver, Colorado who informed me that his office has a "jacket" on an investigation of King. He stated that the primary investigation was being conducted

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by the SEC and said that he was unable to give me detailed information without authorization from the United States Attorney and his superiors. Thus, both the United States Attorney and the postal authorities in Denver had notice in early 1972 of the charges made by Marriott which had been the basis of the earlier Frederickson allegations and, if Mr. Treece's recollection is correct, the postal investigator working with the SEC on the case had the information before that.

10. The Government's rationalization of its prior misstatements to this Court with respect to Stanley Sporkin's awareness of the 1971 Frederickson allegations requires little comment beyond the observation that Mr. Sporkin could hardly be expected to accept such an explanation from one of the subjects of his investigations. Mr. Sporkin admittedly took a "strong interest" in the pending investigation of John King in 1971 (Sporkin Aff't p. 2). He had, in 1970, personally devoted many hours becoming familiar with the facts of the relevant transactions and talking to the participants, including Rowland Boucher (See Ex. D to Def. King Post-Trial Delay Motion and trial Ex. JJ). The Arctic revaluation was, according to Mr. von Stein (aff't submitted in bankruptcy motion, pp. 2-3) "a natural focus" for the SEC following "notoriety" in 1969 and 1970. Nevertheless, Sporkin claims to have taken so little heed of crucial memoranda outlining the basic charges in this case, that he did nothing about them and, when asked in 1975 for a statement to be included in a sworn affidavit, forgot about them entirely (a lapse in memory which should make the Government more understanding with respect to the problems of defendants

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who were forced to meet charges against them involving facts which are six years old). Mr. Sporkin has still given no explanation why he failed to give any "instructions or directions ... regarding these memoranda or regarding any matter described therein" beyond his alleged inability to remember doing so (Sporkin Aff't, p. 2). Even if Mr. Wing had no knowledge, at the time of the pre-trial motions in this case, of the 1971 SEC interviews of Frederickson, Mr. von Stein certainly did (von Stein Aff't p. 4, Tr. p. 2735) and yet he apparently made no attempt to correct Mr. Wing's unintentional misstatements.*

11. With respect to the Consolidated Oil & Gas transaction, the Government explains its failure to follow up on the only piece of evidence offered at trial which indicated the existence of a buy back agreement by making the incredible assertion that no one at the SEC saw fit to read a Wall Street Journal article relating to a matter with which Mr. Sporkin was personally concerned at that time (Wing Aff't p. 7).

12. The Government's contentions with respect to the prejudice suffered by the defendants as a result of the delay in this case demonstrate an insensitivity to the realities involved in defending a case of this sort and a penchant for misrepresenting defendants' contentions. In answer to these contentions, the defendants stand, for the most part, upon their prior submissions. Some points require comment.

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* Mr. Wing had obviously learned of Frederickson's information by the summer of 1975. It was at that time that Frederickson's name was omitted from the Government's list of prospective witnesses, not, as indicated in Mr. Wing's affidavit, at the time of the grand jury investigation (Wing Aff't p. 6).

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13. Regarding the signed original buy back agreement which Lowry allegedly kept in his safe until 1972, the prosecutor, with no basis in the record whatever, assumes that Gov't Exh. 7Y is a carbon copy of that agreement. (Wing Aff't pp. 8-9). Defendants contend that no one knows what that carbon, which could not be authenticated at trial, relates to or when it was prepared. It is as unlikely that Lowry would have prepared an original document which contained the erroneous citation to the name of his own law firm in Gov't Exh.7Y as it is that he would have prepared one, such as Gov't Exh. 1, in which his name was misspelled.

14. The Government's argument with respect to the missing signed original agreement rests on the assumptions that such a document existed and that it was identical in terms to the unsigned copies represented by Gov't Exhs. 1 and 7Y. This position assumes the conclusion which is at issue. Defendants contend that King never signed or agreed to <u>that kind</u> of an agreement and, therefore, either Lowry's 1972 testimony (Tr. 1413-21) is correct and there never was an executed copy, or the document in Lowry's safe was a different agreement. In either case, the entire theory of the Government's case is discredited. Regardless of what the prosecutor now says about the technical sufficiency of his other proof, there can be no doubt that this case would never have been brought, much less successfully prosecuted, if Lowry's safe contained nothing at all or a document which conflicted with Gov't Exh. 1. The crucial issue of whether any buy back agreement that existed was prompted by the February 10 Mecom-King telephone call could have been established by a signed original document containing terms at variance with Gov't Ex. 1 and matching the memorandum

of that call (if Gov't Ex. 1 was a draft prepared by Lowry after the February 10 call, it is entirely likely that King would have revised the draft before signing it).

15. The Government minimizes the importance of a timely discovery of Gov't Exh. 7Y, the carbon which could not be authenticated at trial (Wing Aff't p. 10). Mr. Maloney, Boucher's counsel, has spoken to Mr. Robert E. Dippo, who discovered the file in which the carbon was found. Mr. Dippo states that he has no idea what condition the file was in originally but that it is not now in chronological order. It is no longer possible, therefore, to establish the date when the carbon was prepared and filed by referring to the dates of surrounding documents.

16. The Government answers defendant's contention regarding Mecom's missing telephone records by admitting that, contrary to the prosecutor's specific representation prior to trial, he has now been informed that records of such calls "may" actually exist (Wing Aff't p. 11). Mecom refused to talk to me prior to trial and I did not subpoena his telephone records when he appeared as a witness at trial because Mr. Wing specifically assured me that none existed. (Prior to trial Mecom, with the assistance of the prosecutor, successfully avoided being interviewed, much less subpoenaed.*)

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* Defendant's counsel repeatedly attempted to speak to Mecom, who made himself impervious to service (civil litigants were unsuccessfully attempting to get his testimony). He was never "in" and ignored all messages to call back. Mr. King finally managed to reach him by telephone and elicit a promise to allow us to talk to him, but when I travelled to Houston and attempted to do so I was again told he was out and again the promised return call was not forthcoming. Mr. Wing refused to inform defense counsel when Mecom came to New York to be interviewed by the Government and, when one such occasion happened to coincide with a defense counsel visit to the prosecutor's office, Mecom was hidden by the prosecutor in order to assist him in avoiding an interview.

A telephone bill reflecting a call from Mecom to King on February 10, 1970 would certainly have been helpful corroborative evidence and would have been most useful in cross-examining Mecom (without something of the sort it would have been useless to go into the subject "blind" with a hostile witness who could not even remember what year he went into bankruptcy). It is also worth noting that if the trial had been held within a reasonable time of the events, other telephone records, such as Lowry's, would have been available to corroborate the defendant's testimony.

17. The Government's arguments regarding Marriott's diary and Tanner's notes (Wing Aff't p. 11) require acceptance of the unlikely contentions that a lawyer would not keep, for billing purposes, a record of business telephone calls and that the single relevant sentence in Mr. Tanner's Wall Street Journal article could not have been helpfully amplified by his notes or by his recollection as refreshed by them.

18. With respect to the testimony of Neil MacKenzie, Mr. Wing truly speaks like a lawyer whose client is the United States of America when he finds "unintelligible" the defendants' contention that a witness who has moved to South Africa is for all intents and purposes unavailable (Wing Aff't p. 12).

19. The Government states that Walter Montague died on January 4, 1971 (Wing Aff't p. 12) and the defendants concede that if this is true he would have been unavailable for trial regardless of the Government's delay. Eric Scott and Edward Cowett would not.*

* The prosecutor's implication that Scott would have been available had the defendants not asked for an adjournment of the trial from September 1975 to January 1976 is irrelevant and misleading. As the prosecutor knows, Boucher had no trial counsel at that time and I was actually engaged in another matter which made it impossible to begin investigating the facts of this case until October 1975. The further adjournment of the January trial date was necessitated by the Court's schedule and acquiesced to by the Government. In any event, had the trial taken place two or three years earlier when it should have, Mr. Scott's availability would not have been affected by the normal delays that occur in a case of this size and complexity.

20. In answering defendants' contentions regarding the material nature of Cowett's testimony, the prosecutor depends chiefly on a series of unwarranted assumptions about what Cowett would have said which highlight the need for the man himself. For example, how does the prosecutor know that "Cowett had no knowledge of ... the Mecom or Consolidated side deals (whatever they were)" (Wing Aff't p. 13). How does he know what Cowett learned from Raff (with whom he had prior contacts regarding the bona fides of the Fox-Raff transaction) (Wing Aff't pp. 13-14)? How does he know that Cowett was not a participant in negotiations with a major oil company in the summer of 1969 (Wing Aff't p. 14)? How does he know that Cowett was "misled" by Boucher's letter of June 4, 1969, which "clearly establishes" nothing other than the need for Cowett's testimony with respect to it (Wing Aff't p. 14)? How does he know that FOP--through Cowett--had no knowledge of the KRC acquisition of the Bristol Bay properties (Wing Aff't p. 15)? How does he know Cowett's views regarding the "10% minimum" or that Cowett "presumably" was "influenced in part" by a particular Arthur Andersen memorandum (Wing Aff't p. 15)? How does he know what Cowett would have said about his views regarding the benefits to IOS from its dealings with KRC (Wing Aff't p. 16)? And, how does he know that Cowett was unaware of the sales of new properties to FOP in 1970 (id.)?

21. Mr. King has informed me that Cowett had considerable knowledge of the defendants' dealings with Mecom and COG and Cowett's testimony about these matters would have supported the defendants' testimony as to the negotiations regarding the Canadian Arctic permits. I am informed, for

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example, that: Cowett was aware of prior dealings between Mecom and King and King supplied him with a list of those with whom he had done business; Cowett and King discussed a proposal to buy out Mecom's interests in the spring of 1970, the feasibility of using Mecom's rigs, which were then located in Jordan, for drilling in the Sinai and the possibility of purchasing Mecom's hotel in Lima, Peru; Cowett was aware of King's role in obtaining stadium financing for Mecom's New Orleans Saints and IOS was asked whether it could supply financing for that project; Cowett was interested in Mecom's plans for building a new airport in New Orleans. In addition, Cowett was aware of COG and discussed with King the possibility of IPL, IOS's real estate fund, investing in COG's Hawaii investment. In addition, Mr. King states that Mr. Cowett may have known about discussions between Mecom and King concerning a proposed partnership and may also have known about the fact that the source of Mecom's downpayment on the Arctic was a $275,000 payment made by one of the King companies on an unrelated business transaction. Cowett's knowledge of and contacts with Mecom and COG indicate he may well have known about the details of the defendants dealings with them in the Arctic transaction (which no witness claimed to have been secret). Cowett's testimony about his relationship with Mecom, whom he knew personally, might have revealed that the two men spoke about the Arctic and, at least, would have bolstered defendants' contention that there could have been no "deal" with Mecom which the defendants could have intended to keep secret from Cowett.

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22. The Government's speculation that other witnesses could have and did make up for Cowett's absence (Wing Aff't ¶ 23, 26, 29) ignores his unique position as a prime mover and go-between. It is particularly unrealistic to suggest that the defendants (as the prosecutor does in ¶ 26) could call witnesses to testify to conversations with Cowett when the only way such witnesses could be identified would be through Cowett.

23. The Government contends, without support, that whatever "side deals" existed "were secret from Cowett" (Wing Aff't p. 15). Without such secrecy there was no fraud. The defendants contend that they had no reason to hide any of their arrangements from Cowett. They may, in the course of the hectic activities of the times, have mentioned such arrangements to him and the extent of his knowledge would have been a clear indication of their intent - they would hardly have told him, for instance, of understandings about giving Mecom drilling business unless such understandings were innocent. The fact is that the defendants dealt almost exclusively with Cowett regarding the sale of properties to FOF as well as the 1969 revaluation. He was the only person with knowledge of both sides of most aspects of the FOF-King relationship. Since the crime with which the defendants are charged consists of allegedly misleading FOF, it is absurd to say that the man who was the link between FOF and the defendants could not provide material testimony.

24. Without addressing himself to any of the specific instances of faded recollections raised by the defendants, the prosecutor brushes them off as having

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"little or no significance." (Wing Aff't p. 16). It is fatuous for anyone who was present at this trial to deny that not only the few examples referred to by defendants but all of the testimony in the case suffered from the passage of time.

DEFENDANT'S MOTION BASED ON IMPROPER DENIAL OF PRE-TRIAL MOTION FOR A CHANGE OF VENUE

25. The prosecutor's responses to defendant's assertion that a trial in New York prevented him from effectively defending himself demonstrates generally an insensitivity or unconcern with the problems of a private litigant. The United States Government, with its unlimited resources, is able, as the prosecutor did on the last day of the trial, to bring in more than a dozen witnesses from all over the country on short notice in order to prove relatively minor points. On this day alone the Government spent thousands of dollars on airfares. Neither King, who is in personal bankruptcy, nor Boucher have the resources to match this sort of display. The prosecutor has made various implications about King's supposed hidden wealth but, speaking for myself and for Boucher's counsel, I assure the Court that funds were not available for the defense of this case in an amount adequate to meet the Government's efforts. In any event, the enormous costs of defending a case of this sort would limit almost any defendant. The additional burden of holding the trial 2000 miles from the homes of the defendants, most of the witnesses and virtually all of the relevant sources of documents should not be inflicted without good cause. The Government has shown none. The defendants stand on their original papers with respect to this motion. A few factual points require comment.

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26. The Government's statements regarding defendants' interviewing of witnesses (Wing Aff't pp. 17-18) do not take into account the abbreviated nature of most such interviews. Bennett King, Mecom and Frederickson, spoken to by the defendants, gave no useful information prior to trial and, in the cases of the latter two, gave misleading statements.

27. The Government's comments with respect to the defendants' access to documents (Wing Aff't p. 18) assume that the only documents in which the defendants have any interest are those selected by the Government to prove its case. Moreover, many of the documents, such as the Arthur Andersen, IOS, Mecom and Donovan Leisure files were made available virtually on the eve of trial.

28. The prosecutor persists (Wing Aff't p. 19) in stating that granting defendants' pre-trial motion would have resulted in two separate trials despite his knowledge that this is not a fact. As stated repeatedly, defendants consented from the outset to be tried together in whatever location was selected.

29. The Government points to Messrs. Fishman, Rodden and Sadler to refute defendants' contention that subpoening a witness is more difficult when the witness is thousands of miles away (Wing Aff't pp. 19-20). All three of these witnesses were cooperative and required subpoenas, immediately prior to testifying, as a matter of course.

MOTION BASED ON PROSECUTORIAL MISSTATEMENTS

30. In support of defendant Boucher's motion,

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joined in by King, the defendants stand on their prior submissions. A stipulation confirming that the BP sale referred to in defendants' moving papers was made on behalf of IOS as well as KRC is attached hereto as Exhibit B.

MOTION BASED ON DEFENDANTS' BANKRUPTCY TESTIMONY

31. The defendants stand upon their original submissions with respect to this motion. Mr. von Stein's answering affidavit in no way satisfies the burden placed upon the Government by the legal authorities previously cited. The defendants have no reason to rely on the accuracy of Mr. von Stein's recollections and his affidavit, even if it is accepted without qualification, does not cover the uses to which the bankruptcy testimony could be put which, according to the cases, would infect the prosecution.

WHEREFORE, the defendants respectfully request that, on the basis of all of the submissions herein, their motions be granted in all respects. If a hearing with respect to defendants' motion based on prejudicial delay is ordered, defendants respectfully request that the Government produce, in addition to the documents specified in our original moving papers, the Denver postal inspector's "jacket" referred to at page 5 supra and the bills referred to at page 11 of Mr. Wing's answering affidavit.

Michael F Armstrong
MICHAEL F. ARMSTRONG

Sworn to before me this
9th day of August, 1976.

Joan Farrell
Notary Public

JOAN FARRELL
Notary Public, State of New York
No. 03-[illegible]
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires March 30, 19[illegible]

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 75 Cr. 70 (MEF)

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN S. PFEIFFER, Esq., being duly sworn, deposes and says:

1. On October 20, 1971, I was appointed the attorney for Charles A. Baer, Trustee of King Resources Company, a corporation undergoing reorganization pursuant to Chapter X of the United States Bankruptcy Act.

2. As a part of my duties, I prepared and filed with the Reorganization Court petitions for permission to reject, as executory, certain contracts concerning Canadian Arctic Island permits, namely, contracts with John M. King, Consolidated Oil & Gas, Inc., John W. Mecom and Lakeshore Associates, a limited partnership.

3. I filed these applications in the early part of April 1972, requesting early hearings and caused the application regarding John W. Mecom to be served upon his representatives.

4. On April 13, 1972, I received a phone call from Mr. Neal Marriott, and I returned the telephone call

EXHIBIT A

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on that day or the day following. Mr. Marriott advised he represented John W. Mecom and did so at the time that the subject contract was executed. In his conversation with me, Mr. Marriott gave me sufficient information to lead me to believe that the transaction may not have been of arms-length and that the same may have been for the accommodation of John M. King and/or King Resources Company.

5. I do not recall exactly what Mr. Marriott stated, but the notes I made of such conversation contain the following: "tancelled check, Royal Resources, Geo. Hardin, Bob Hulsey, Xmas Eve '69, Dr. Frederickson, Tim Lowry."

6. On April 20, 1972, I reported my conversation with Neal Marriott to Fred M. Winner, United States District Judge for the District of Colorado (the Reorganization Judge) who, in turn, contacted James Treece, United States Attorney for the District of Colorado. Judge Winner, Mr. Treece and I spent approximately 1 - 1 1/2 hours together discussing the aforementioned four contracts and my conversation with Neal Marriott. I attempted to advise Mr. Treece of what I knew and I observed Mr. Treece was taking notes.

7. My reason for advising the Reorganization Judge and Mr. Treece of my conversation with Mr. Neal Marriott, and I so stated to the Court and Mr. Treece, was to avoid interfering with any investigation that the United States Government may be conducting or would conduct by reason thereof, but at the same time to be in a position to proceed expeditiously with the reorganization of King Resources Company, an integral part thereof being the rejection of these contracts. In this connection, I asked Mr. Treece to advise me if my proceeding would in any way interefere.

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Mr. Treece did not so advise, nor did I receive further communication from Mr. Treece.

8. In that Mr. Mecom, in effect, consented to the petition to reject the contract as executory, it was not necessary that evidence surrounding the execution of the contract be present. Therefore, the petition was heard and determined.

9. The Trustee made his Report to the Reorganization Court pursuant to Section 167 of the Bankruptcy Act on October 10, 1973. I drafted the portion of that Report which refers to the valuation of the Canadian Arctic Island permits. Therein it is stated that the "Trustee questions the bona fides of the transaction with Mecom, as the evidence tends to establish that he entered into the transaction as an accommodation to John M. King or one of his corporations." The primary support for such statement are the facts revealed to me by Mr. Neal Marriott.

JOHN S. PFEIFFER

Sworn to before me this
4th day of August, 1976.

Notary Public
JOAN FARRELL
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Certificate Filed in New York County
Commission Expires March 30, 19[illegible]

A 291

AUG 5 [illegible]

JRW:dl

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

Plaintiff, :

- v - :

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

STIPULATION

75 Cr. 70 (MEF)

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York by John R. Wing, of counsel and John M. King, the defendant, and by and with the consent of his counsel, Michael F. Armstrong, Esq., and the defendant A. Rowland Boucher, and by and with the consent of his counsel, Andrew J. Maloney, Esq., that the transaction referred to in Defense Exhibit BG in evidence, to wit, the proposed sale of certain Arctic acreage to British Petroleum, was in fact consummated in the summer of 1970 and the Fund of Funds participated as a seller in that transaction.

Dated: New York, New York

August 3, 1976

Michael F. Armstrong

MICHAEL F. ARMSTRONG, ESQ.
Attorney for Defendant John M. King

ANDREW J. MALONEY, ESQ.
Attorney for Defendant
A. Rowland Boucher

John R. Wing. /ks

JOHN R. WING, ESQ.
Assistant United States Attorney

EXHIBIT B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Plaintiff, :

- against - : AFFIDAVIT OF SERVICE

JOHN M. KING and A. ROWLAND BOUCHER, : 75 Cr. 70 (MEF)

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANTHONY FUCCELLO, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to this action, and on the 9th day of August, 1976, he personally served the within Reply Memorandum in Support of Defendant King's Post-Trial Motion on the Issue of the Government's Pre-Indictment Delay and Affidavit on Honorable Marvin E. Frankel, United States District Judge for the Southern District of New York, United States Court House, Foley Square, New York, New York; Clerk of the Court, United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, New York; John R. Wing, Esq., Assistant United States Attorney, United States Attorney's Office, One St. Andrew's Plaza, New York, New York; and Andrew J. Maloney, Esq., Maloney, Viviani & Higgins, 1290 Avenue of the Americas, New York, New York by hand delivering true copies thereof to each of the above-named parties at their respective addresses.

Anthony Fuccello

Sworn to before me this
9th day of August, 1976.

Notary Public

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BARRETT SMITH SCHAPIRO & SIMON

26 BROADWAY

NEW YORK, N. Y. 10004

(212) 422-8150 CABLE: ROOTBAR
INTERNATIONAL TELEX: 66420

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DONALD S. RICE
MARTIN F. RICHMAN
CARL F. ROGGE, JR.
DONALD SCHAPIRO
EDMUND R. SCHROEDER
DAVID SIMON
W. MASON SMITH
ARTHUR D. SPORN

August 27, 1976

Honorable Marvin E. Frankel
United States District Judge
Southern District of New York
U.S. Court House
Foley Square
New York, New York

Re: U.S. v. King

Dear Judge Frankel:

In reviewing the various transcripts which we recently obtained from the Government in connection with the bankruptcy motion, we came across additional indications of how the unavailability of Messrs. Cowett and Scott prejudiced the defendants at the trial.

1. From the testimony of Henry Buhl, former director of FOF Proprietary Funds and IOS:

(a) When Scott visited King Resources Company (KRC) in Denver in 1968 he was accompanied by "another" oil analyst or a professional from Scott's firm or from an outside consulting firm (p. 15). This indicates both Scott's expertise and his access to other experts.

(b) Scott gave continuing reports to the FOF directors and during 1969 discussed the Arctic in some detail. Buhl testified that Scott "had particularly strong knowledge of that subject" and was aware of the fact that other major oil companies were investing large sums of money in the Canadian Arctic (p. 17).

(c) Scott continued to give favorable reports on the Arctic to the FOF Board (p. 19).

(d) Buhl or Cowett hired Coleman Morton, who had been trained as a mining engineer, to help investigate The Colorado Corporation in the fall of 1969 (pp. 124-125).

(e) Buhl believes that Cowett authorized new investments in natural resources during 1970 (p. 125).

2. Testimony of Edmund G. Brown indicates that:

(a) IOS management was dealing with many other people who were experienced in mineral investments of various kinds in addition to King (p. 11).

(b) Cowett investigated John King and KRC thoroughly and reported that this was the best available natural resource organization that IOS could do business with in the United States (p. 12).

(c) Cowett told the directors that the Arctic deal was excellent and arm's length and stressed the fact that Consolidated Oil & Gas had nothing to do with KRC and had a good reputation in the oil industry (pp. 31-32; 36).

(d) Cowett had told the directors that the 10% minimum was an Arthur Anderson criterion and not his (p. 35).

(e) As far as FOF's directors were concerned, COG was the principal purchaser in the Arctic transaction and was the "arm's length symbol" (p. 38). Although Mecom was considered, his was a small piece.

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3. Bernard Cornfeld.

(a) Cowett had wanted or had agreed to purchase a small natural resource company and had talked with Cornfeld about getting other experts in petroleum and natural gas. In this connection, a contract had been drawn up between FOF or IOS and Tex Feldman, a West Coast-based oil man.

(b) Cowett was on the telephone with many persons for hours in connection with the Arctic revaluation. There is no way the defendants would be aware of the substance of these conversations.

Very truly yours,

Michael F. Armstrong

Michael F. Armstrong

cc: John R. Wing, Esq.
Andrew J. Maloney, Esq.

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JRW:dlf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - : AFFIDAVIT

JOHN M. KING, et al., : 75 Cr. 70 (MEF)

Defendants. :

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN R. WING, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and I am familiar with the facts and proceedings in the above-captioned case. This affidavit is submitted in response to certain allegations made in the defendants' reply papers supporting their motions to dismiss the indictment on grounds of prejudicial delay and improper use of immunized bankruptcy testimony.

2. Our investigation of the facts alleged in King's counsel's affidavit of August 9, 1976 (paragraph 9) indicates that the information concerning the Mecom transaction related by Pfeiffer to United States Attorney James Treece in April 1972 was referred by Mr. Treece to the SEC rather than to the Postal Inspector in Denver. I have received the following information from United States Postal Inspector Al Velthoen in the Denver office. Neither

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JKW:dlf

he nor the Inspector in charge in 1972 nor the Assistant Inspector in charge in 1972 have any recollection of receiving information from Mr. Treece relating to the Mecom Arctic transaction. The Denver Postal Inspector's Office did "jacket a file" on John King on April 3, 1973, but that resulted from their receipt of a letter from the SEC indicating that the SEC had referred case No. D-1407 to the Justice Department for criminal prosecution of John King for mail fraud violations among other things. This was the first of two criminal reference reports submitted by the Denver SEC office to the Justice Department recommending criminal prosecution of King and Boucher. Mr. Velthoen advised me that the Postal Inspectors file was opened solely in connection with the SEC case and that his office then extended an offer to provide any assistance desired by either the SEC or the United States Attorney's Office. Mr. Velthoen further advised me that when such a file is "jacketed" on an individual any other information relating to that individual which might have been held in other files in their office would normally be put into the jacketed case file. Mr. Velthoen advised me that the jacketed case file contained absolutely no reference to any information relating to the Mecom Arctic transaction nor to any phone call between United States Attorney Treece and anyone at the Postal Inspector's Office concerning that subject.

JTW:dlf

3. I have been advised by John Kelly of the Denver SEC Office that he did recall receiving a telephone call from Mr. Treece relating to the Treece, Pfeiffer, Judge Winner conference, which according to his notes, occurred in April 1972. Kelly told me that he recalls Treece indicating that there would be some information relating to possible fraud in the Mecom Arctic transaction which would be developed at some proceeding scheduled to take place in the bankruptcy matter. Kelly, who was already working on two other substantial investigations of King, advised Mr. Treece that he already had some knowledge of that particular matter (which accords Mr. Treece's recollection) and that he had no interest in attending any bankruptcy proceeding for fear of possible taint. Mr. Pfeiffer has informed me that at the time of his conference with Judge Winner and Mr. Treece a proceeding was scheduled at which he anticipated there would be some evidence presented relating to the Mecom transaction but subsequent to the conference, Mecom's attorney consented to Pfeiffer's application to reject the Arctic contract as executory and, therefore, no such proceeding was required or took place.

4. Boucher's supplemental memorandum of law in support of his motion to dismiss the indictment on the ground of improper use of immunized bankruptcy testimony asserts (p.9) that "the Assistant United States Attorneys assigned to the investigation and trial of this matter read or learned of the substance of Boucher's testimony in the bankruptcy."

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JRW:dlf

Having recently reviewed the Boucher bankruptcy testimony in our possession I can confirm with greater certainty my earlier representation that to the best of my knowledge, recollection and belief I did not read Boucher's bankruptcy testimony in the course of investigating or prosecuting this case.

5. Boucher's supplemental memorandum also suggests that Mr. VonStein's undated handwritten notes of a telephone conversation with Pfeiffer referring to depositions "on Lark" refers, in part, to Boucher's bankruptcy testimony in August 1973. Information which Mr. Vizcarrondo received from Mr. Pfeiffer and Mr. VonStein indicates that, to the contrary, the depositions referred to in those notes were 1975 depositions scheduled in a civil fraud action brought by the King Resources Trustee against Boucher and others. The reference in Mr. VonStein's notes to "Boucher later" refers, according to Pfeiffer, to the facts that Boucher's deposition was going to be scheduled even later and, in fact, it never took place.

6. King's supplemental memorandum of law alleges possible taint of the Government's case by Mr. VonStein's contact with John Phillips, an attorney for Global Natural Resources, Inc. Mr. Vizcarrondo tells me that he received the following information from Mr. Phillips. Phillips stated that Mr. Armstrong, King's attorney, called him before the post-trial hearing and asked about his participation in King's personal bankruptcy proceedings.

JRW:dlf

Phillips told Armstrong that Global had no interest in King's bankruptcy but that he may have been present at a few sessions, and he asked Armstrong to give him the dates of King's testimony so he could check his time sheets. Mr. Armstrong never called Mr. Phillips back to give him the dates. Mr. Phillips stated that on his own he found a file containing notes of his participation in the King bankruptcy proceedings and determined that he was present at three sessions. King testified at only two of the sessions, and neither time did he testify about the Arctic transactions. Mr. Phillips is certain that he did not transmit to Mr. VonStein any information that he learned as a result of King's testimony, and all information that he had on the Arctic sales was completely independent of King's testimony.

WHEREFORE, it is respectfully requested that defendants' motions be denied in all respects.

JOHN R. WING
Assistant United States Attorney

Sworn to before me this
30th day of August, 1976.

NOTARY PUBLIC

A 300-A

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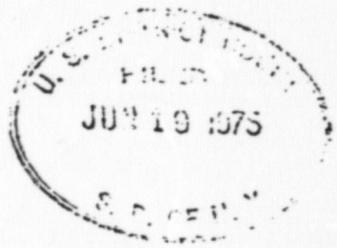
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

-against-

JOHN M. KING, and
A. ROWLAND BOUCHER,

Defendants.

75 Cr. 70

MEMORANDUM

#42632

FRANKEL, D.J.

There remain pending motions to transfer this case to the District of Colorado for trial. The court has considered uncommonly extensive submissions, both written and oral, on this subject. The question is not susceptible of a light or absolutely clear answer. But it must, of course, be decided. Balancing the several considerations, and discounting some seeming exaggerations, the court will deny the requests for transfer.

I. As a main point, defendants stress their own residence in Denver and argue that it will be enormously costly to bring their witnesses here. Having received lists of possible defense witnesses, which were also delivered to government counsel, and being advised that the lists probably include a substantial number of people who will not in fact be called, the court is now aware in any event that a majority of those the defendants name

are destined to be called as government witnesses. Furthermore, a number who are not in this duplicative category are from places other than Denver, so that at least some expense would be incurred in summoning them into the District of Colorado. Indeed, at least several for whom this is true can be brought less expensively to New York City than to Denver - namely, witnesses from places like Tel Aviv, Toronto, and Lexington, Kentucky.

Factors like these do not erase defendants' problems, but they do mitigate. It may be true that a witness called for the Government will have to be recalled in the defense case. It is not inevitable. There is at least a substantial possibility that able defense counsel will elicit whatever they need in cross-examination.

2. Defendant King urges special hardships for himself and his family if he must be away from Denver for an extended time. These are genuine concerns. They have, however, been inflated. Mr. King's absences from Denver have been frequent and extensive. The commendable and understandable desire to be with Mrs. King can, so far as appears, be satisfied by her accompanying him here for the trial.

3. The Government has shown ample and legitimate grounds in the circumtances of the alleged crimes

A 300-C

for bringing and trying the indictment in this district.

4. There is an approach to a forecast by defendants that their prominence in Denver will give rise to problems of prejudicial publicity if the case is transferred to Colorado. Defendants promise to handle this, should the necessity arise, by agreeing to join in an application for transfer to some third district. But the negative impact of this prospect for present purposes is obvious.

5. The claims of oppressive expense are diminished by the fact that Boucher is to be indemnified and that King may well be in the same position. King's papers on this subject are not impressive. The point is at best in some doubt. But the court, since the time for decision is here, records as of now the probable fact that the Government correctly reports the situation in this aspect.

The motions to transfer are denied. So ordered.

Dated, New York, New York
June 19, 1975

MARVIN E. FRANKEL
U.S.D.J.

90

(13)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 75 Cr. 70 (MEF)

JOHN M. KING and
A. ROWLAND BOUCHER, :

Defendants. :

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL F. ARMSTRONG, being duly sworn, deposes and says:

1. I am a member of the firm of Barrett Smith Schapiro & Simon, attorneys for the defendant John M. King in the above-entitled action. I am familiar with the facts and prior proceedings herein.

2. This affidavit is respectfully submitted on behalf of the defendant King in support of a renewal of his pre-trial motion under Rule 12(b) of the Federal Rules of Criminal Procedure for a hearing to determine whether evidence which the Government introduced in the trial of this case was obtained as a result of leads derived from King's testimony under a grant of immunity in his bankruptcy proceeding.

3. On May 11, 1976, motion papers were served upon the Government seeking dismissal of the indictment or, in the alternative, a hearing on the ground that the evidence submitted to the grand jury was obtained as a

result of testimony given by the defendant King under a grant of immunity in his bankruptcy proceeding. Copies of these motion papers are annexed hereto as Exhibit A. On the evening of May ,8, 1976, the Government filed answering affidavits and memoranda. Copies of these documents are annexed hereto as Exhibit B. The Government also submitted to the Court an in camera statement setting forth the sources of its evidence.

4. On May 20, 1976, defendant King filed a memorandum in response to the Government's papers. A copy of this memorandum is annexed hereto as Exhibit C. Factual assertions were included in this memorandum because time did not permit the preparation of a separate affidavit. I prepared that memorandum personally and all factual allegations made in it are incorporated herein as part of this affidavit.

5. On May 21, 1976, the Government filed eight more affidavits in response to defendant's motion and a similar motion by defendant Boucher. These affidavits are annexed hereto as Exhibit D.

6. On May 21, 1976, the Court issued a memorandum denying defendants' motions on the ground that they were tardily made. The Court stated,
"Both motions are denied, subject to possible renewal after trial. If there is a conviction, the burden will be upon defendant or defendants to renew so that a hearing may be scheduled without delay." (Ex. E, p. 4).

7. For the reasons set forth in the affidavits and memoranda previously filed and in this affidavit, the

defendant King, pursuant to the Court's order, hereby renews his motion. The defendant respectfully requests:

(a) that a hearing be ordered at which the Government will be required to demonstrate that information derived from testimony given by Mr. King in his bankruptcy proceedings was in no way used by the Government in investigating this case, obtaining the indictment, or presenting evidence at trial;

(b) that prior to this hearing, the grand jury testimony and interview memoranda taken by the Government in this case and in the related cases in Denver, Colorado be made available to defense counsel for their inspection and that, depending upon the volume of such material, a reasonable time be provided defense counsel to inspect such testimony;

(c) that defense counsel also be provided prior to the hearing with the material submitted in camera to the Court in the course of pre-trial motions.

8. As set forth in pre-trial motion papers, both by the defendants and the Government, the central figure in the gathering of the Government's evidence in this case was SEC attorney Thomson von Stein. The facts brought out at trial fortify the apparent fact that Mr. von Stein was in fact exposed to evidence directly or indirectly emanating from the bankruptcy proceeding and that he conducted his investigation with little or no concern for the problem of possibly tainted evidence.

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9. In connection with the pre-trial motions, von Stein submitted two affidavits. Both of them were carefully drafted to refer to specific documents which had come to the attention of the defendants. In neither affidavit does Mr. von Stein make any general assertion with respect to his procedures in insuring that his investigation would be free of taint from the bankruptcy proceedings or to his actual exposure to such taint. Despite an invitation in defendant's pre-trial reply memorandum to do so, he did not even state that he has never read the bankruptcy testimony itself.

10. According to the Government, Mr. von Stein questioned over 80 witnesses in preparation for this case. 24 transcripts were turned over to defendants at trial pursuant to 18 U.S.C. §3500 reflecting such questioning. In 13 of these transcripts, Mr. von Stein makes no reference whatsoever to the possibility that the witness might have learned something in the bankruptcy hearing (Trueblood - September 27, 1973; Carr - December 17, 1973; Mecom - September 30, 1974; Dippo - June 11, 1974; Reidy - December 13, 1973; Beesley - June 6, 1974; Boone - June 6, 1974; Gutjahr - October 1, 1973; Rinfret - December 12, 1974; Conwill - July 10, 1974; Gordon - November 7, 1973; Bennett King - September 26, 1973; Lowry - June 5, 1974).

11. In each of the other 11 transcripts made available to defendants, von Stein's warning to the witness was totally inadequate and in some he went right ahead and questioned the witness after being alerted to the possibility that he might have been exposed to tainted material. In no instance did von Stein terminate

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an interview because of the witness's having indicated that he had been exposed indirectly to the bankruptcy testimony.

(a) At the first of these sessions, the testimony of Erlon E. Nowell on September 6, 1973 (GX 3536A, Ex. F*), Mr. John Kelly of the Denver SEC office was present. Mr. von Stein began by informing Mr. Nowell of the existence of the bankruptcy proceedings and then asked, "Have you participated in any of them or read any of the testimony of any of them?" Without waiting for a response to this inadequate formulation of the warning question, von Stein went off the record. Mr. Kelly then picked up the questioning and did his best to get clear answers from an obviously confused witness. Mr. Nowell said that he had read news reports and had talked to Paul Fairchild, president of Natural REsources Corporation, but it was never made entirely clear whether he had any information derived from the bankruptcy testimony. Although Kelly did not pursue the matter to a completely satisfactory conclusion, he questioned the witnesses for six pages and admonished him not to reveal any information he might have gotten from the bankruptcy proceeding. Such care was not subsequently exhibited when von Stein was conducting the questioning alone.

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* In each of these subparagraphs, "Ex. ___" refers to copies of the relevant pages of testimony annexed as an exhibit hereto.

(b) In the testimony of William M. Booth, Jr., on September 28, 1973 (GX 3510A, Ex. G), Mr. von Stein's questions were directed only to matters which were learned directly from the bankruptcy testimony or in talking to people who had testified. He did not, as Kelly had done, press the witness on whether he had "learned from someone else who may not have testified, as to what someone else testified to" (Ex. F, p. 7).

(c) In the testimony of Stanley B. Hallman given on October 1, 1973 (GX 3517-I, Ex. H) Mr. von Stein, after five-and-a-half pages of testimony, asked the witness (somewhat confusedly) if he had learned anything from the bankruptcy testimony. When the witness stated, "I guess I don't follow you," von Stein asked whether the witness had "read somebody else's testimony" or "spoken with somebody who gave testimony". Mr. Hallman answered that he had spoken to Mr. Larry Ocrant, vice president of Colorado Corporation, and Mr. Hulsey and that they had informed him that "They were invited to testify in some of these proceedings, whether it was bankruptcy or what, I don't recall." When Mr. von Stein was unable to ascertain from Mr. Hallman whether Mr. Hulsey's testimony had been in the bankruptcy proceedings, he asked him, "Well, do you happen to know if any of your knowledge of Colorado Corporation, King Resources, comes from things

that you have learned from bankruptcy proceedings, or was it just discussions of things you had already been aware of?" Mr. Hallman answered, "More than likely, the latter." von Stein said, "Well, if any questioning I may get into, the answer to which you know could only come from what you have learned in the bankruptcy proceedings just say so and don't tell me. I don't want any information from that source." The fact that von Stein approximated the admonition given by Kelly did not excuse his failing to press in detail the possibility that a key witness who might himself have been a bankruptcy witness had been exposed to John King's testimony.

(d) In the testimony of T. H. Robert Hulsey, on October 22, 1973 (GX 3505-D, Ex. I), Mr. von Stein elicited from Mr. Hulsey the fact that he had read "newspaper articles" but did not make any inquiry as to what he had read. Von Stein was satisfied with a tentative answer to a question as to whether Hulsey had learned any substantive information about events occurring in King Resources or Colorado Corp. "or something like that". Despite Mr. Hulsey's statement that he had a problem understanding Mr. von Stein's question, von Stein swore him in and continued.

(e) In the testimony of Neal Marriott on October 22, 1973 (GX 3519B, Ex. J), Mr. von Stein again apparently discussed the question

of the bankruptcy off the record. Immediately after going back on the record, he asked Mr. Marriott only whether he had learned anything from the testimony given in the bankrupt[illegible] proceedings. This question, without more elaboration, was entirely inadequate since it would logically imply that the questioner was interested only in whether the witness had actually read the testimony.

(f) On the next four occasions, von Stein's questioning again was limited to asking, in almost identical language, whether the witness had "learned" anything from the "testimony in the bankruptcy proceedings" (George Hardin, November 7, 1973, GX 3518-E, Ex. K; Arthur Peder, December 4, 1973, GX 3500, Ex. L; Graydon Hubbard, December 12, 1973, GX 3522-A, Ex. M; Roger Davis, December 14, 1973, GX 3502-G, Ex. N).

(g) In the testimony of C. Harrison Cooper on October 23, 1973 (GX 3516D, Ex. O), Mr. von Stein, after five pages of questioning, asked the witness if he had "learned anything from the bankruptcy testimony". Mr. Cooper asked if he was referring to the "167 Report" [of KRC's trustee in bankruptcy] which he stated that he had read. Mr. von Stein said, "All right. I don't know whether or not they were particularly based on that testimony, but assuming you have read that, aside from that have you learned anything that

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you knew to be from testimony given in any of the bankruptcy proceedings?" Cooper answered, "Yes. There's a number of statements in Mr. Baer's report here that I didn't have as much knowledge of as shows up in that statement." Mr. von Stein's response was, "I see." Mr. Cooper started to say something, "I have heard a lot of these things, but I don't have any real --," but Mr. von Stein interrupted with a question narrowing the issue to conversations with people who had themselves testified, "Have you discussed with anybody who has given testimony in the bankruptcy proceedings, have you discussed this testimony with him?" Mr. Cooper said "no," and Mr. von Stein said "All right," and proceeded with the questioning.

(h) In the testimony of William V. Coffey on December 19, 1973 (GX 3525E, Ex. P), Mr. von Stein indicated that he had an off-the-record conversation with Mr. Coffey in which he had discovered that Mr. Coffey had in fact been exposed to bankruptcy testimony. He began his questioning by saying, "We have also discussed off the record the problem of my receiving evidence which may have come from testimony given by others under compulsion in the King bankruptcy proceedings. I ask you, and I will attempt to phrase my questions so that you would be testifying as to matters which you learned of your own knowledge either at the time but not from testimony which has been given under grant of immunity in

the King bankruptcy proceedings." The questioning then proceeded without any indication of how Mr. von Stein planned to implement his remarkable procedure. Either Mr. von Stein had already discussed the areas where Mr. Coffey had gained knowledge from the bankruptcy proceedings -- and done so off the record -- or he was purporting to be somehow clairvoyant.

12. These 11 transcripts, and the 13 in which no warning was given, represent, only those turned over to defense counsel during trial. No complete analysis of the adequacy of Mr. von Stein's warnings with respect to the bankruptcy testimony can be made without an examination of the transcripts and interview memoranda covering the rest of the more than 80 witnesses who were questioned.

13. Mr. von Stein has admitted having in his possession copies of documents directly relating to the bankruptcy proceedings involving King and KRC, including notes of one of the sessions of King's testimony and newspaper clippings reporting in detail several sessions of the testimony. He also has revealed that he had obtained copies of A. Rowland Boucher's testimony in the KRC bankruptcy proceedings and other documents relating to those proceedings. Mr. von Stein has given no satisfactory explanation as to why he took the trouble to order such documents after seeing them in the various files from which they were obtained. He merely states that, although he had ordered the documents to be sent to the prosecutor, he never paid any attention to them. These documents were not discovered by the prosecutor until the eve of trial when he conducted a search in con-

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nection with defendants' pre-trial motions. Under these circumstances, no resolution of the question of whether Mr. von Stein had improper access to bankruptcy testimony can be resolved until the prosecutor conducts a thorough search of his own files and those of the SEC and until a hearing is held to test the assertions of Mr. von Stein and others with respect to their direct or indirect access to Mr. King's testimony.

14. Mr. von Stein was apparently seeking information from individuals working on the bankruptcy case. Mr. Thomas H. Boerschinger is a former trial attorney with the Tax Division of the Justice Department who worked on King's bankruptcy and whose affidavit was submitted by the Government in the pre-trial motions. I am informed by Mr. Boerschinger that in approximately August 1975, Mr. von Stein telephoned him inquiring about the status of the bankruptcy proceedings. Mr. Boerschinger did not recall having spoken to Mr. von Stein prior to this conversation. He stated that he does not recall very much about the conversation, but that he told Mr. von Stein that the records relating to the bankruptcy were in Denver and that he referred him to the individual who could be approached in order to gain access to those records. He does not recall whether this remark was volunteered by him or was made in response to a question by Mr. von Stein. He stated that he understood that Mr. von Stein went to Denver to examine the records.

15. The circumstances under which John King's bankruptcy testimony was taken were such that it was almost inevitable that information about that testimony

would be known by a large number of people, some of whom may have been interviewed by Mr. von Stein. Anyone connected with KRC or John King would have been extremely interested in any newspaper reports about the testimony or any personal reports from spectators. The attached affidavit of Louis G. Isaacson, Mr. King's bankruptcy attorney, demonstrates that there were no attempts made to control the security of the hearing. They were attended by "a great number of spectators" and reporters from the local and national press. They were reported prominently in local news articles. There was no procedure for the screening of spectators or the control of press coverage and the bankruptcy judge never made any statements relating to the confidential nature of the testimony. Moreover, the procedures originally set up to control access to the various documents submitted in connection with the bankruptcy disintegrated so that it was possible for anyone who wished to have ready access to these documents.

16. Mr. Isaacson includes in his affidavit a schedule showing that there were 22 different sessions of the first meeting of creditors between June 30, 1971 and July 29, 1975, when a formal adjudication was entered, and five meetings thereafter. He has informed me that Mr. King either testified or made statements at almost all of these sessions, particularly the early ones. However, apparently only the first three sessions were transcribed. The question of possible taint from John King's testimony at these proceedings cannot be resolved

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until a hearing is ordered providing for the transcription of the testimony with respect to the remaining sessions. Such transcripts would reveal not only matters about which Mr. King testified but also would probably reflect the presence of individuals to whom Mr. von Stein or other SEC personnel may have had access.

17. The available transcripts indicate that one person who undoubtedly was interviewed by Mr. von Stein was present throughout. David Coffey, an accountant form KRC who also did personal work for Mr. King, was present at the sessions held on June 30 and July 1st and 2nd, 1971. His presence is indicated on the record at approximately 54 places. The defendants have not received material relating to governmental interviews of Mr. Coffey because he was not called as a witness in the case.

18. The defendant King respectfully submits that the information setr forth in this affidavit and in the papers submitted in connection with the pre-trial motion necessitate a hearing to ascertain whether the Government's evidence wass tainted by exposure to Mr. King's testimony at his personal bankruptcy proceedings. In accordance with the procedure set forth in United States v. Dornau, 356 F.Supp. 109, (1973) the defendant King respectfully requests that the Court order such a hearing after giving defendant the opportunity to examine relevant testimony of witnesses interviewed by the Count prior to trial.

WHEREFORE, for the reasons set forth in this affidavit and in the affidavits and memoranda of law

previously submitted by both defendants, the defendant John King respectfully requests that the Court order a hearing at which the Government is obliged to demonstrate that the evidence submitted to the grand jury and at trial was free from any taint as a result of information derived directly or indirectly from John King's testimony in his personal bankruptcy proceedings and that the Court further order that prior to this hearing the Government make available to the defendant all grand jury testimony and SEC testimony and memoranda of interviews in connection with the investigations of John King conducted in Denver and in New York and that the Court further order that counsel for Mr. King be given a reasonable time, depending upon the volume of such material, to review this material prior to the hearing and that the Court make available to counsel for Mr. King the documents previously submitted by the Government in camera in connection with the defendants pre-trial motions.

Michael F. Armstrong
Michael P. Armstrong

Sworn to before me this
____ day of July, 1976.

Notary Public

NOREEN MARIE McDONAGH
Notary Public State of New York
No. 24-4523015
Qualified in Kings County
Commission Expires March 30, 1978

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A. 315

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

AFFIDAVIT

Louis G. Isaacson, being first duly sworn on oath, deposes and says that he is a member of the law firm of Isaacson, Rosenbaum, Spiegleman & Friedman, P.C., with offices in Denver, Colorado and that the said law firm, in conjunction with Mr. William Rochelle, an attorney with offices in Dallas, Texas, has acted as counsel for John M. King in connection with the Chapter XI proceeding pending in the Bankruptcy Court of the Federal District in and for the District of Colorado;

That the aforesaid proceedings have continued from June 1, 1971 until July 29, 1975 upon which latter date a formal adjudication in bankruptcy was entered;

That attached hereto, marked as Exhibit A and hereby incorporated herein is a schedule of the dates upon which the First Meeting of Creditors was held in connection with the aforesaid Chapter XI proceedings;

That Affiant attended each of the aforesaid First Meetings of Creditors in the company of the aforesaid William Rochelle with the possible exception of one or two such meetings at which another member of his firm may have attended in place of Affiant;

That each and every of said meetings was attended by a great number of spectators with more people attending the earlier meetings than attended the later meetings but that at each of said meetings there were present one or more (and usually all) of the five persons who were selected as a creditors committee;

That with the exception of a few of the meetings which were held in the latter part of 1974 and early in 1975 there were invariably present, reporters from the local press and at many of said meetings there were present reporters for associated press and other national press services and at such meetings there were likewise present representatives of the radio and occasionally television media;

That on frequent occasions, upon the adjournment of such meetings Affiant, accompanying John M. King out of the Courthouse, was approached by television cameras and newsmen asking to and sometimes succeeding in interviewing Mr. King;

That following each of the meetings listed on Exhibit A (with possibly one or two exceptions) there would be prominent news articles detailing the nature of the questions asked and the testimony given;

That at virtually every one of the meetings listed on Exhibit A there would likewise be present in the Courtroom, taking notes of the proceedings, Carolyn McNeill, a representative of the U.S. Attorney's office in Denver, Colorado, John Moats, an attorney assigned to the Internal Revenue Service and other individuals whose identity was either not known to Affiant or not presently recalled;

That there was no procedure at any such meeting for screening of spectators. Neither was there any procedure for control of press coverage and the Affiant does not recall any instance when the Bankruptcy Judge ever made any statements relating to the confidential nature of the testimony at such meetings;

That as a part of the Chapter XI proceedings John M. King was required to deliver to the Clerk of the Bankruptcy Court all of the documents relating to his prior conduct of business with documents filling many packing cases. Originally opportunities to examine such documents required identification of the party and a statement of his interest and right of examination. After the passage of time this procedure disintegrated and it became possible for any one who wished to walk into the room in which such documents were stored and observe the same.

FURTHER AFFIANT SAITH NOT.

Louis G. Isaacson

Subscribed and sworn to before me this ___ day of July, 1976.

Notary Public

My Commission Expires: _____

EXHIBIT A

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Selma King Chap. XI Pet. bankruptcy - 1st meeting of Credit.

Date	Continued to:	
6/30/71	7/1/71	
7/1/71	7/2/71	
7/2/71	8/11/71	
8/11/71	8/13/71	
8/13/71	10/5/71	
10/5/71	12/10/71	
12/10/71	1/19/72	
1/19/72	3/17/72	
3/17/72	5/31/72	
5/31/72	9/7/72	
9/7/72	11/29/72	
11/29/72	4/3/73	
4/3/73	7/25/73	
7/25/73	12/5/73	
12/5/73	2/14/74	
2/14/74	5/17/74	
5/17/74	9/27/74	
9/27/74	12/13/74	
12/13/74	2/13/75	
2/13/75	5/17/75	
5/19/75	7/11/75	
7/11/75	7/29/75	
7/29/75	Formal adjudication entered	
10/7/75	11/12/75	
11/13/75	12/1/75	*
12/2/75	12/16/75	*
12/15/75	2/19/76	*
2/19/76	3/3/76	
3/3/76	motion for continuance (Woodford Accountant)	
	Order GW KE: Complaint of the Trust of Trust, etc, et al	
3/5/76	hearing & findings, conclusions & order on complaint for relief from stay: The Trust of Trusts, etc, et al	
3/10/76	Answer to complaint filed by plaintiff, Trust of Trusts, et al	
3/11/76	minutes of hearing, findings, conclusions entered & continued hearing of trial. Ordered: Bankruptcy motion for stay denied.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
v.	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	KING NOTICE OF MOTION TO DISMISS INDICTMENT
Defendants.	:	

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Michael F. Armstrong, Esq., sworn to on the 11th day of May 1976 and upon all of the papers and proceedings heretofore had herein, the undersigned will move before the Honorable Marvin E. Frankel, United States District Judge, in the United States Courthouse, Foley Square, New York, New York at a time and place convenient to the Court:

1. For an order pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure to dismiss the indictment or, in the alternative, for a hearing, on the grounds that evidence upon which the indictment is based was obtained as a result of information derived from testimony given by the defendant John M. King under immunity in his bankruptcy proceedings.

EXHIBIT A

2. For such other relief as the Court may deem just and proper.

Dated: New York, New York
May 11, 1976

Very truly yours,

BARRETT SMITH SCHAPIRO & SIMON

By _____
A Member of the Firm
Attorneys for John M. King
26 Broadway
New York, New York 10004
(212) 422-8180

TO: HON. ROBERT B. FISKE
United States Attorney
Southern District of
New York
United States Courthouse
Foley Square
New York, New York 10007

Andrew J. Maloney
Maloney, Vivianni & Higgins
1290 Avenue of the Americas
New York, New York 10019

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against- : 75 Cr. 70 (MEP)

JOHN M. KING and
A. ROWLAND BOUCHER,

Defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL P. ARMSTRONG, being duly sworn, deposes and says:

1. I am a member of the firm of Barrett Smith Schapiro & Simon, attorneys for the defendant John M. King in the above-entitled action. I am familiar with the facts and prior proceedings herein.

2. This affidavit is respectfully submitted on behalf of the defendant King in support of his motion under Rule 12(b) of the Federal Rules of Criminal Procedure to dismiss the indictment or, in the alternative, for a hearing, on the ground that evidence which the Government intends to introduce at trial was obtained as the result of King's testimony under a grant of immunity in his bankruptcy proceeding.

3. On April 8, 1971, a memorandum was sent to "All United States Attorneys" by the Department of Justice on the subject of immunity under the Bankruptcy Act. A copy of this memorandum is annexed hereto as Exhibit A.

4. On June 1, 1971, John M. King and his wife filed in bankruptcy under Chapter XI of the Bankruptcy Act in the District Court of Colorado. The actions were entitled In the Matter of John McCandish King, Debtor, and Carylyn Becker King, Debtor, Case Nos. 71-B-1630 and 71-B-1631.

5. John King testified, pursuant to section 7(a) at the Bankruptcy Act (11 U.S.C. §25(a)), before the referee in bankruptcy at the first meeting of creditors on June 30, 1971. Among those in attendance at this session were: Morris Silverstein of the Department of Justice, Tax Department; James C. Owen, Jr. of the Denver law firm, Holmes Robert & Owen, representing the United Bank of Denver; and M. Lauck Walton of the New York law firm of Donovan Leisure Newton & Irvine, representing the Mercartile Bank and Trust Company. The testimony consumed 152 pages. On that occasion King testified on the following subjects:

pp. 34-40	Detailed discussion of the relationship of The Colorado Corporation ("Colorado Corp."), Imperial American Resources Fund, Inc. ("Imperial American"), Royal Resources Exploration Inc. ("Royal Resources") and subsidiaries; brief explanation that the management companies received 25% net operating profit interest (NOPI); Larry Ocrant created concept of equipment leasing operation.
50	King personally loaned money to Robert Raff.

pp. 57-60 Outline of King's role in Lakeshore Associates and the general financial condition of the company.

78-89 Discussion of the relationship between Colorado Corp. and Imperial American complex - particularly the financial workings (including NOPI) of the limited partnership; mention of payment by limited partnership to management companies; discussion of King's ownership of Colorado Corp. and his prior direct ownership of limited partnership interests in 1968 and 1969.

90-96 Outline of the KRC-IOS relationship in Arctic properties; discussion of the KRC purchase of the Arctic permits, optimism of the Arctic's geology, KRC sale of 50% of their rights to Natural Resources Prop. Fund, KRC's expenditures in the Arctic and the December 1969 sale to Mecom, Lakeshore, COG and JMK. Discussion of the Sun Oil transaction with respect to Arctic properties.

97-112 Discussion of KRC-Colorado Corp. agreement whereby Colorado Corp. received 25% NOPI interest in KRC's share of natural resource property interests jointly owned with FOF, as a result of which Colorado Corp. owned slightly

pp. 97-112 (cont'd)	over 3% NOPI interest on FOP properties; explanation of King's relationship to Colorado Corp. in terms of this agreement and the subsequent direct benefits he received; reaffirmation in detail of his optimism in the Arctic; explanation of fact that 60 or 70% of the Arctic area in question is under water; King, KRC, IOS and Colorado Corp. have already gotten proven interests in the Arctic; discussion of actual dollars paid on the Arctic, projected total cost of the contract over several years; discussion of Sun Oil - KRC deal with respect to the Arctic properties and effects on the potential use of interest.
129	Discussion of King's loan to Lakeshore Associates for $1 million; made at the request of Bennett King and Edgar Greenenbaum; some of the loan was repaid and a domestic trust holds a note for the remainder.

6. On July 1, 1971, King testified at a second session of the first meeting of creditors. The testimony consumed 97 pages. Among those in attendance at this session were Mr. Silverstein and Carolyn J. McNeill, an assistant in the United States Attorney's Office in Denver, Colorado. King's testimony included the following:

pp. 180	Discussion of the establishment of Bahamian trusts to acquire IOS stock and efforts made to deal with the SEC consent decree; David Kerr, who was active in both IOS and Regency activities, eventually purchased a note which the trusts owed King when the trust became unable to repay King because of poor performance of IOS stock.
194-98	Discussion of reasons for authorized signatories on personal checks; King's delegation of authority in approving payments of bills; utilization of accounts for special purposes; reasons for keeping accounts in banks in several geographic locations.
205-09	Discussion of King's acquisition of KRC stock and the various capacities in which he served KRC; tracing of the history of KRC from its inception in 1955.
210-12	Identification of a $5,000,000 debt to KRC on King's asset schedule which represents drilling commitments and interest due on his December 1969 purchase of an interest in the Arctic.
214-17	Outline of King's financial relationship with Colorado Corp. and his acquisition of that company's stock; King's chronological relationship with Colorado Corp. and its subsidiaries.

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pp. 217-22 Definition of a NOPI in detail and comparison of the advantages and disadvantages of the NOPI, the royalty and the override.

222-31 Description of King's purchase of $6 million worth of NOPI from the Colorado Corp., involving Imperial American and Royal Resources NOPI interests acquired by the management companies and perhaps other wells drilled by the Colorado Corp. or KRC; discussion of Colorado Corp.'s financial difficulties in late 1970; many of the original purchasers of the NOPIs were IOS personnel; discussion of the defaults by such purchasers.

7. On July 2, 1971, King testified at a third session of the first meeting of creditors. The testimony consumed 35 pages. Among those in attendance at this session was Mr. Silverstein. King's testimony included the following:

pp. 268 Explanation of King's purchase of 878,000 shares of Colorado Corp. stock from the King family trusts; 10% down paid by conveyance of $400,000 Lakeshore note to the trust.

8. On August 11, 1971, King testified at a fourth session of the first meeting of creditors. The testimony

consumed 67 pages. Among those in attendance at this session were Mr. Silverstein and Mr. Owen. King's testimony included the following:

pp. 13-14	Statement that King has made no post-petition efforts regarding Raff's notes; belief that this note is not collectible because the deal Raff was involved in "blew" as a result of the filing in bankruptcy.
19	Belief that a loan was made to Keene Wolcott, having something to do with a land purchase and a prepaid interest deal.
63-65	Outline of a 1967 loan King made to Raff and 1971 agreement in which he released Raff from payment of the promissory note; discussion of why King does not believe the 1971 agreement was ever closed.

9. On June 7, 1973, John King testified in depositions conducted by the Department of Justice pursuant to section 21(a) of the Bankruptcy Act (11 U.S.C. 44(a)). The testimony consumed 147 pages. Among those in attendance at this session were Thomas Boerschinger of the Department of Justice, Tax Division, who conducted the questioning, John Moats of the Denver office of the Internal Revenue Service, and Ms. McNeill. On that occasion, the testimony included the following:

pp. 5-14	Detailed explanation of the structure and business activities of Colorado Corp. and its subsidiaries; discussion of King's involvement with these companies.
10-11, 18	Outline of King's travel schedule; statement that King had commission arrangements with all entities that he was ever associated with so that he could gain personal income; belief in total delegation of authority to his employees.
39-44	Extensive description of NOPI; description of how Colorado Corp. acquired NOPIs from Imperial American and Royal Resources and from various property interests.
46-47	Explanation of how Colorado Corp. received an interest in the Arctic as a result of KRC-IOS sales; statement that King did not suggest the sale of the Arctic properties to FOF, nor did he conceive of or negotiate the terms of that sale.
47-52	Statement that King did not negotiate the sale of Colorado Corp. NOPIs in 1969; discussion of his role in that sale; King and Cowett negotiated the dollar amountt of NOPI interests

pp. 47-52 (cont'd)	to be purchased by IOS Bank; explanation of the history and relationship of KRC-Colorado Corp.-IOS; the sale of NOPIs was a means of interesting IOS in KRC; most of King's and Cowett's dealings were done over the phone.
53	King's hope that if KRC had acquired an IOS subsidiary (a deal which was negotiated in early 1968, but fell through), that IOS, would expand their business in exploration activity with KRC
54-66	Continued discussion of the sale of NOPI interest to Cowett and conversations King had with both Cornfeld and Cowett with respect to the sale; discussion at how the value of the NOPIs was determined the 1968 and 1969 leases then owned and the anticipated acquisitions during the year were appraised at 50% of what Colorado Corp. thought the NOPIs would be worth in January of the following year); technically, Colorado Corp., Imperial American and Royal Resources were probably selling these NOPIs to IOS;

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pp. 54-66 (cont'd)	King's feeling that IOS had confidence in KRC based on past performance and KRC was not in a position even to want to deceive IOS; review of documents on the NOPI sale, including a memo which specifically mentions Lowry and Ocrant - King thus assumes that they were involved in the deal.
67-68	Statement that there were very few executed documents between IOS and KRC; IOS would agree to buy a project and then send a check from Bank of New York; King not very happy with this arrangement but felt that IOS' word was good and they were the customer.
68-72	Discussion of the motivation behind the NOPI sale - to provide funding for Colorado Corp.'s cash demands and needs.
73-74	King's practice to tell his subordinates what his ultimate goal was in a transaction and then rely on their judgment to achieve it; this procedure was followed in connection with the IOS-Colorado Corp.-NOPI transaction; King does not know if Stan Hallman worked on this deal but Hallman was a tax expert who often assisted King.

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pp. 78	King discussed the NOPI deal with both Jim Bye and Keene Wolcott.
87	King could have signed a document on a date different from the actual consummation of a transaction due to the fact that he was so busy.
104-09	Discussion of the agreement for purchase of NCPIs that was executed with David Ehlers; King agreed to repurchase Ehler's property interest for 55% of Ehler's cost if the properties turned out to be worthless.
109-10	King probably told Wolcott that he would take care of any problems that might arise when Wolcott was in short supply of cash.
110	Lowry's role with respect to understanding agreements between parties.
110	King does not recall written buy-back agreements for the Colorado Corp. NOPIs;
111-12	Discussion of King's conversations with Cowett regarding insuring investors against loss; King theoretically would have been willing to guarantee a minimal result where he had control and transaction involved large volume.

112-13 King was dealing with proven and semi-proven properties and wildcat acreage; the rate of write-offs of leases at the time the NOPIs were sold was 60-70%.

113 King felt that the Ehlers' NOPIs chances of turning out to be dry was a technical impossibility.

10. On June 8, 1973, King continued his testimony in the deposition referred to in paragraph 9 above. The testimony consumed 104 pages. Among those in attendance at this session were Mr. Boerschinger and William McDonald, William McGovern and William Sims of the Internal Revenue Service. King's testimony included the following:

pp. 208 Papers or memos marked "personal and confidential" circumvented King's staff and were sent directly to King.

11. On June 14, 1973, King concluded his testimony in the deposition referred to in paragraphs 9 and 10 above. The testimony consumed 86 pages. Among those in attendance at this session was Mr. Boerschinger Mr. Moats and Ms. McNeill. King's testimony included the following:

pp. 333 Joel Mallin was an attorney hired by IOS to plan tax-sheltering devices for IOS employees who were U.S. tax-paying citizens.

12. We have been advised by former bankruptcy counsel for King that they believe that King may have testified or made statements on numerous other occasions in the bankruptcy proceedings at which times representatives of the Government or creditors who later spoke to the Government were present. It is their recollection that transcripts were not ordered on all such occasions.

13. In an affidavit of John Wing, the prosecutor in this case, which was filed in opposition to defendants' previous motion to dismiss the indictment on grounds of improper forum shopping by the Government and prejudicial delay in the prosecution of this case, a copy of which affidavit is attached hereto as Exhibit B, the Government sets forth the timetable of its investigations relating to John King, including the following:

(a) statements by Stanley Sporkin, SEC director of the Division of Enforcement, that no investigation of the subject matter of this indictment was begun by the SEC until July 1973 p. 6, par. 10;

(b) the formal order of investigation was issued by the SEC on July 24, 1973, with respect to this case p. 4, par. 8;

(c) this case was referred to the United States Attorney on September 27, 1974. The grand jury began its investigation in November 1974 and the indictment was returned on January 20, 1975 p. 5, par. 8;

14. In an attached affidavit by first assistant J. Terry Wiggins and three other Assistant United States Attorneys in the United States Attorney's office in Denver, Colorado, the Government states that two cases were referred by the SEC to the Denver United States Attorney's office on April 27, 1973. These cases involved Imperial American, Colorado Corp., KRC, the IOS takeover and the sale of limited partnership interests in Imperial American. A copy of this affidavit is attached to the affidavit of John Wing referred to in paragraph 13 above. No indictment was returned as a result of this investigation.

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15. On information and belief, in 1970 the board of directors of Fund of Funds, an open-end mutual fund and subsidiary of IOS, retained the law firm of Donovan Leisure Newton & Irvine for the purpose of investigating the relationship between KRC and FOF. John Wing, the prosecutor in this case, has informed me that he, or people under his direction, have reviewed the files amassed by the Donovan Leisure firm during the course of their investigation. Numerous documents produced by the Government in the course of discovery bear the stamp of the Donovan Leisure firm.

16. Many of the documents produced by the Government in the course of discovery bear the stamp of the Denver law firm, Holme, Roberts & Owen.

17. In a letter dated April 22, 1974 from the United States Attorney in Denver, Colorado requesting John King's testimony before the grand jury, the matters which were under investigation by the grand jury are set forth. A copy of this letter is annexed hereto as Exhibit C.

WHEREFORE, on the basis of the facts set forth herein and the arguments contained in defendant King's memorandum of law submitted herewith, it is respectfully submitted that the indictment should be dismissed or, in the alternative, a hearing should be ordered and, prior to that hearing, defendants should be given the opportunity of examining the grand jury testimony and the SEC testimony in both the Denver and New York cases referred to above.

Michael F Armstrong
MICHAEL F. ARMSTRONG

Sworn to before me this
11th day of May, 1976.

Joan Farrell
JOAN FARRELL
Notary Public, State of New York
[illegible] County
Commission Expires March 30, 19[illegible]

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Mar .o. 744 EXHIBIT A

TO: ALL UNITED STATES ATTORNEYS

SUBJECT: Bankruptcy Immunity Under the Organized Crime Control Act of 1970 (Public Law 91-452, October 15, 1970)

As you know, Title II of the above Act amended clause (10) of Section 7(a) of the Bankruptcy Act (11 U.S.C. 25(a)) to provide that the automatic immunity applicable to the testimony of the bankrupt under the Section 7(a) is extended to "any evidence which is directly or indirectly derived from such testimony." This has the effect of barring the use of any leads derived from the testimony of the bankrupt in a criminal investigation or prosecution.

Under 18 U.S.C. 3057 bankruptcy referees, receivers, and trustees are required to report criminal violations to United States Attorneys. With the enactment of the new immunity provision, if successful prosecution of the bankrupt is to result from such referrals, it will be necessary that the Government be in a position to show that no evidence or leads used in the investigation or prosecution were directly or indirectly derived from his immunized testimony. Since this will require close cooperation between bankruptcy officials, the Federal Bureau of Investigation, and United States Attorneys, we have discussed referral procedures under the immunity statute with representatives of the Bankruptcy Division, Administrative Office of the United States Courts. While it is recognized by all concerned that no referral procedures can be developed that will preserve the criminal case in all instances, certain safeguards can be undertaken that, if followed, might reasonably be expected to protect against inadvertent use of the bankrupt's testimony in developing a criminal case against him.

The Bankruptcy Division of the United States Courts has agreed to recommend the following procedures to bankruptcy referees in handling criminal referrals in bankruptcy proceedings:

(1) In criminal referrals based upon evidence or leads not directly or indirectly obtained from the testimony of the bankrupt, the existing referral procedures will be followed.

EXHIBIT A

(2) In any case in which the bankrupt testifies and a criminal investigation is underway or is anticipated, the bankruptcy referee will order that no one shall have access to the transcript of the bankrupt's testimony without first identifying himself and signing an appropriate record reflecting that he has requested and been granted access to the transcript. Adoption of this procedure will assist the Government in showing in any subsequent criminal proceeding that the prosecution did not have the benefit of a review of that portion of the bankruptcy record.

(3) In addition, in any case in which the bankrupt testifies and a criminal investigation is underway or is anticipated, the bankruptcy referee will appropriately advise trustees, receivers, creditors, attorneys, and other persons who heard the bankrupt's testimony that, in the event they are interviewed concerning criminal aspects of the case, no disclosure should be made concerning the content of the immunized testimony of the bankrupt.

(4) In any instance in which the only evidence of criminality is developed in the bankrupt's testimony, the referee will refer the case to the United States Attorney for possible criminal investigation without making reference to any information based directly or indirectly upon the bankrupt's testimony. The United States Attorney will request the Federal Bureau of Investigation to conduct a limited investigation, possibly including a review of available books and records and the bankrupt's schedules, to determine whether there is independent evidence upon which a criminal investigation may be predicated. (The Criminal Division recognizes that the argument may be raised that the immunity bars a referral based solely upon the immunized testimony, but it is believed that in cases of significant import, at least, the Department has a responsibility to investigate.)

(5) When the bankrupt is a corporation, bankruptcy referees will consider the feasibility of clearly designating an individual not suspected of criminal conduct as the person to represent the bankrupt under 11 U.S.C. 25(b), thus possibly avoiding a grant of immunity to a prospective criminal defendant.

In any instances in which a bankruptcy criminal investigation is initiated on the basis of information derived from sources other than the bankruptcy referee or a bankruptcy proceeding, United States Attorneys should be alert to apprize the bankruptcy referee of the investigation in order that, if necessary, he may institute the above safeguards. United States Attorneys are reminded to advise bankruptcy referees of the disposition of criminal investigations in bankruptcy matters.

Bankruptcy referees and United States Attorneys should be alert to the fact that the immunity under the Act extends only to the bankrupt. Incriminating testimony of witnesses other than the bankrupt may properly be the subject of a routine referral under 18 U.S.C. 3057.

In developing these referral procedures, consideration was given to the question whether the immunity conferred in a Section 7(a) hearing (first meeting of creditors) is applicable to subsequent proceedings conducted pursuant to Section 21(a) of the Bankruptcy Act (11 U.S.C. 44(a)). There is case law supporting the argument that the Congress did not intend that the immunity be applicable to a 21(a) hearing. However, the Second Circuit has questioned this distinction on the basis that a 21(a) hearing is merely a continuation of the 7(a) hearing and, therefore, the immunity attaches. While the discussions on this point are dicta, the reasoning of the Second Circuit is persuasive and might well be adopted by the Supreme Court if the issue were brought before it. See United States v. Weisman, 219 F. 2d 837 (1955); United States v. Castellana, 349 F. 2d 204 (1965).

United States Attorneys are requested to keep the Fraud Section advised of significant problems and developments in the application of these immunity provisions.

Copies of this memorandum are being furnished to the Bankruptcy Division of the United States Courts and the Federal Bureau of Investigation for their information.

Will Wilson

WILL WILSON
Assistant Attorney General
Criminal Division

EXHIBIT B.

JRW:dlf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - : AFFIDAVIT IN OPPOSITION

JOHN M. KING and :
A. ROWLAND BOUCHER, : 75 Cr. 70 (MEF)

Defendants. :

- - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN R. WING, being duly sworn deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and I am familiar with the facts and proceedings in the above-captioned matter.

2. This affidavit is submitted in opposition to the defendants' motions for dismissal of the indictment and a change of venue.

3. On January 20, 1975, Indictment 75 Cr. 70 was filed against the defendants King and Boucher charging them in four counts with securities fraud, mail fraud, wire fraud and conspiracy in violation of Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Section 1341, 1343 and 371. The indictment charges the defendants with defrauding the shareholders, directors and auditors of a mutual fund, The Fund of Funds (FOF), among

JKW:dlf

others, by falsely representing that various oil, gas and other natural resource interests in the Canadian arctic and elsewhere purchased on FOF's behalf from defendants' King Resources Company (KRC) had far greater value than was actually the fact and by falsely representing that a partial sale of arctic oil and gas interests was sufficiently arms-length and bona fide to justify FOF's $100 million revaluation of its remaining arctic interests, thus promoting and justifying substantial additional purchases by FOF from KRC of oil, gas and natural resource interests. On February 3, 1975 both defendants entered a plea of not guilty to this indictment.

4. On March 19, 1975 defendants King and Boucher filed motions to dismiss the indictment on two separate grounds or in the alternative for a change of venue. Defendants' motion to dismiss the indictment is initially based on a claim "that the United States abused its authority in presenting the evidence in this case, first to a grand jury in the District of Colorado and, in failing to obtain an indictment there, thereafter presenting the evidence in this case to a grand jury in this District."

5. Defendants' claim is factually unsound and legally insupportable. (See accompanying memorandum of law) I have been advised by representatives of the United States Attorney's Office in the District of Colorado that

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their office did not seek, or present or fail to obtain any indictment containing any of the charges in this case to any grand jury in Colorado. In fact, the SEC Criminal Reference Report on this matter was not even completed and forwarded to the United States Attorney for the Southern District of New York until September, 1974 Substantially before that date, on information and belief, King and Boucher were subpoenaed to appear before a Denver grand jury which was investigating completely different fraud matters. These matters, which were specified in the April 22, 1974 letter from the Denver United States Attorney to John King (attached as Exhibit A to King's motion), did not concern the Arctic sales which are the subject of the instant indictment. The attached affidavit of Assistant United States Attorney Spurgeon, who was in charge of the Colorado investigation, is conclusive on this point.

6. Defendants further move to dismiss the indictment on the ground that government delay in bringing the indictment materially prejudiced their rights to defend against it by depriving them of the testimony of Edward Cowett, who died in 1974.

7. Defendants make absolutely no showing of how Cowett's testimony would have benefited their defense and thus clearly fail to establish a scintilla of prejudice resulting from his unavailability. Boucher, who submitted

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An extensive affidavit on the delay point, remains totally mute as to how or why Cowett's absence affects him, and King failed to submit an affidavit. On information and belief, Cowett's absence is actually a benefit to the defendants because there is every reason to believe that his testimony would only have assisted the Government in proving the charges in this indictment.

8. Defendants further allege that the indictment was not returned until one day before the expiration of the statute of limitations as a result of "culpable delay" on the Government's part. (The statute of limitations expiration date is some what debatable in view of the fact that at least one of the specific false representations charged in the indictment was not even made until May 1970.) Defendants acknowledge that they cannot claim the pre-indictment delay was intentional but argue that it was "culpable delay" by suggesting that the SEC and the United States Attorney's Office in Colorado have known of the fraud charged in this case since 1970. To the best of my knowledge, information and belief that is simply not the fact. The Securities and Exchange Commission issued a Formal Order of Investigation concerning this matter on July 24, 1973. (See Exhibit A to Boucher's Motion to Dismiss.) I have been advised by the SEC staff attorney in charge of the investigation that the

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preliminary SEC investigation which led to the SEC Formal Order was initiated in late June or early July 1973. Pursuant to the Formal Order the SEC staff conducted an extensive investigation interviewing more than 80 people and collecting and reviewing thousands of documents. On September 27, 1974, the Securities and Exchange Commission referred the case to the United States Attorney's Office in the Southern District of New York for possible criminal prosecution. In November 1974, a special grand jury was impanelled in the Southern District of New York to hear evidence in connection with that matter and on January 20, 1975, that grand jury filed this indictment charging King and Boucher with criminal fraud. I have been assigned to this matter since the case was referred to this office. Roughly four months have elapsed between the time the SEC referred the matter to this office and the filing of this indictment. That time was devoted to investigating and analyzing the relevant facts and presenting evidence to the grand jury. I categorically deny that there has been any intentional delay in seeking this indictment in order to gain some tactical advantage over the defendants or to harass them.

9. Defendants argue that the government cannot claim that "the passage of time between the alleged offense and the indictment was caused in any part by lack of knowledge on its part of the events in question," because Boucher was questioned in a phone call in the Spring of 1970 by an SEC representative about the arctic sale to Consolidated Oil and Gas. However, Boucher's description of that phone

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call does not include any reference to advising the SEC of the events constituting the fraud charged in the instant indictment and on information and belief, at the end of that phone call the SEC still lacked any knowledge of the fraud charged in the instant case.

10. With respect to that one phone call I have received the following information from Stanley Sporkin, Director of the Division of Enforcement of the Securities and Exchange Commission. In or about June 2, 1970, representatives of Consolidated Oil and Gas and others met with Sporkin and other SEC officials to discuss a proposed letter from the Chairman of Consolidated Oil and Gas to its stockholders concerning several matters including the company's purchase of Canadian Arctic permits from King Resources Company. In connection with certain statements in the proposed letter relating to the Arctic deal Stanley Sporkin did place a call to Boucher and there was some discussion of that transaction. Sporkin has advised me that Boucher did not inform him during that call of fraudulent conduct by King or Boucher in connection with that transaction and there was no SEC investigation of such fraudulent conduct either before or after that phone call until three years later when an investigation was initiated in July 1973. Sporkin did say that the SEC became aware of the $100 million revaluation of FOF's arctic properties after it was publicized in the media in January 1970, and thereafter made periodic inquiries of IOS attorneys concerning the details of the transaction.

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11. I have also been advised by former Assistant United States Attorney Gary P. Naftalis that in July 1970, while questioning Edward Cowett in connection with certain gold transactions by IOS mutual funds he also inquired about the arctic revaluation. According to Mr. Naftalis this brief inquiry on the arctic uncovered no evidence of fraud and the matter was not pursued in any way.

12. Defendants' suggestion that the SEC office in Denver was investigating this matter in 1970-1972 is also contrary to fact. On August 26, 1970, the Securities and Exchange Commission did issue a Formal Order of Investigation involving John M. King, et al., concerning matters other than the Arctic sale, a copy of which is attached hereto as Exhibit B. I have been advised by Joseph Krys an SEC attorney in Denver that it was in connection with that investigation that the SEC questioned Boucher and King in Denver in 1970, 1971,and 1972. It is apparent from the transcripts of that testimony that King and Boucher were well aware of the subject of that investigation because they were shown a copy of the Formal Order of Investigation.

13. Defendants have also filed motions requesting a change of venue pursuant to Rule 21(b) although they disagree as to where the case should be transferred. Boucher requests a transfer to Denver on the ground that the Government was improperly forum shopping when it sought an indictment in New York after being denied by a Denver grand jury. There is absolutely no factual basis for this claim and it should be summarily rejected. (See paragraph 5, supra)

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Boucher also claims that it would constitute an "enormous" personal and financial hardship for him to stand trial in New York as opposed to Denver. King seeks to avoid trial in New York on the same ground of personal hardship but argues that Denver would be "an equally inappropriate location for the trial." Accordingly, he seeks a transfer to Cheyenne, Wyoming, Albuquerque, New Mexico or Oklahoma City, Oklahoma.

14. Many of Boucher's allegations of personal hardship are based on the assumption that a New York lawyer will represent him at this trial. In that connection he complains that adequate preparation of his defense will require periodic but substantial time in New York prior to trial and that New York counsel are more expensive than Denver counsel. Without challenging the relative cost of counsel, it would appear that this problem is obviated by the fact that a Denver attorney has appeared as Boucher's trial counsel. In any event Boucher alleges that these expenses are covered by an indemnification agreement with King Resources Co. Boucher also alleges personal and business reasons that require his constant presence in Denver. Such claims are somewhat inconsistent with his application for an extension of bail limits to include the states of Illinois, Missouri, California, Wyoming, Montana, Texas and Oklahoma and his motion papers indicating additional travels to West Virginia and Mississippi.

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15. King's allegations of personal and business reasons for remaining near the Denver area parallel Boucher's with the added claim that his wife has been seriously ill for the last year and a half. Such claims are equally inconsistent with defendant's application for an extension of bail limits which cover the entire Continental United States plus Mexico, Canada, Alaska and Hawaii. I have been advised by one of King's attorneys, Gene M. Hoffman, that these extensive bail limits are necessary because King's business activities require him to consult with landowners, businessmen, geologists and bankers "all over the world." Specifically, Mr. Hoffman advised that as of February 10, 1975 King's position as President of a Canadian cattle company required him to travel to cattle auctions in Canada and throughout the United States. In addition, as of February 10, King was planning to spend four to six weeks in Mexico investigating another business opportunity and was also required to make frequent trips to supervise certain properties owned by his children's Trusts in Hawaii, Canada and throughout the United States. None of these activities would appear to satisfy the alleged need to remain near Denver on which this transfer motion is based. During 1969 and the first half of 1970, when many of the activities charged in the indictment took place, on information and belief, King was away from Denver almost 50% of the time and Boucher was away more than 10% of the time.

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16. In further support of their transfer motion defendants claim that "all or virtually all" of the conduct alleged in the indictment took place in Denver or Geneva and that all or virtually all of the witnesses reside in or near Denver and perhaps in Europe. That is not the fact. The proof will show that the activities and transactions referred to in the indictment took place in numerous locations which include both New York and Denver, as well as Geneva, Chicago, Hawaii, Houston, Tulsa and Calgary. More important, the consequences of this fraud affected over 150,000 shareholders of the Fund of Funds ("FOF") who are scattered throughout the world including at least 2,000 in the United States. At trial the Government intends to call witnesses from all of the above named locations except Hawaii as well as from other locations outside the United States. New York, is of course, far more convenient than Denver for New York, Chicago and foreign witnesses, Calgary, Houston and Tulsa are sufficiently distant from both New York and Denver to make the differences of little consequence.

17. Contrary to defendants' claims, there are substantial connections between the events alleged in the indictment and the Southern District of New York. The proof will show various commmications to, from, in or through New York between King or Boucher or their agents and FOF representative relating to the arctic as well as to other natural resource

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transactions referred to in the indictment. In fact, the proof will show that King, with Boucher at his side, personally and fraudulently promoted FOF's falsely inflated arctic valuation in a meeting with FOF directors and other FOF representatives in New York City. The proof will also show that one of the primary features of this fraud involved deceiving FOF's accountants, Arthur Anderson & Co. as to the validity and bona fides of the arctic sales in connection with Arthur Anderson's audit of FOF for 1969. The New York office of Arthur Anderson was one of three Arthur Anderson offices (the other two being Geneva and Denver) actively involved in that particular audit and in the particular footnote relating to the arctic transactions. Arthur Anderson's New York office normally did the bulk of FOF's audit work due to the fact that the vast majority of FOF's assets were held in New York.

18. On information and belief virtually every transaction referred to in the indictment, in which KRC sold oil, gas or other natural resource interests to FOF and its subsidiaries, was recorded in New York when KRC sent a copy of the invoice for each sale to FOF's New York agent and broker Arthur Lipper Company. Lipper was responsible for computing FOF's daily net asset value based on the value of all of its assets including natural resources. Moreover, the payment to KRC by FOF in connection with all natural resource sales referred to in the indictment including the arctic sales was made directly from FOF's New York bank.

JRW:ma

More significantly the $10 million performance fee referred to in the indictment, which FOF paid out as a result of the falsely inflated revaluation of the arctic, was paid out of this same New York bank account. With respect to the arctic transaction referred to in the indictment, arctic sales agreements between KRC and FOF's subsidiaries (whereby KRC purchased from FOF an equivalent interest in the arctic permits to replace the interest sold by KRC to third parties) were all worked out with FOF's New York attorneys and signed in New York by a New York lawyer who was the signatory for FOF's subsidiaries. In fact, when KRC made payment to FOF pursuant to these contracts the money was wired to this same New York bank. It was in New York that FOF's Directors met and voted their approval of the arctic sales transactions and the resulting revaluation. The proof will show that the true facts of the arctic sales were deliberately concealed from the directors and that their approval was voted without any knowledge of the secret guarantees referred to in the indictment. Similarly, it was in New York that the Consolidated Oil and Gas Board of Directors met and ratified their arctic purchase from KRC.

19. In further support of their transfer motion defendants allege that they have never lived or worked in the Southern District of New York and that neither King Resources Co. (KRC) or FOF ever resided in this district. On information and belief these defendants, as the top two

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executive officers of KRC, operated a world-wide business with offices in Boston, Maine, Texas, California, New Orleans, London, Tel Aviv, The Hague, Johannesburg, and Ankara. It is not suprising, therefore, that King, Boucher and KRC all had substantial contact with New York during the period in question. In addition to the contacts referred to above, KRC expense records reflect that during 1969 and the first six months of 1970, King was in New York City a total of fourteen days and Boucher was here for seventeen days. King even purchased a cooperative apartment in midtown Manhattan from Maurice Stans during this period in addition to maintaining a company suite at the Carlyle Hotel. According to claims filed in connection with KRC's bankruptcy KRC utilized New York lawyers, a New York public relations firm, New York telex services and borrowed money from several New York financial institutions. With respect to FOF, three of the nine directors who approved the arctic sales and revaluation at a meeting at One Chase Manhattan Plaza are presently living or working in New York City. As indicated above, at the time of the alleged fraud FOF maintained substantial bank accounts here and relied heavily on the services of New York lawyers, New York investment advisors and a NewYork broker. Most of the Funds' assets in the form of securities were held at the Bank of New York on Wall Street.

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20. Finally, it should be noted that in May 1974, FOF filed a civil suit in New York charging King and Boucher with violations of the federal securities laws in defrauding FOF and its shareholders of $120,000,000 in connection with sales by KRC to FOF of oil, gas and other natural resource interests. Although the suit does not charge the same fraud alleged in the instant case, the natural resource transactions between KRC and FOF include those referred to in this indictment. I have been advised by the plaintiff's attorney that neither King nor Boucher have sought a change of venue in that lawsuit.

WHEREFORE, it is respectfully requested that defendants' motions be denied in all respects.

JOHN R. KING
Assistant United States Attorney

Sworn to before me this
day of April, 1975

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. JOHN M. KING and A. ROWLAND BOUCHER, Defendants.	75-CR-70 AFFIDAVIT OF W. ALLEN SPURGEON, FIRST ASSISTANT UNITED STATES ATTORNEY, DISTRICT OF COLORADO, AND J. TERRY WIGGINS, DANIEL J. SEARS AND JOHN M. KOBAYASHI, ASSISTANT UNITED STATES ATTORNEYS, DISTRICT OF COLORADO

W. ALLEN SPURGEON, J. TERRY WIGGINS, DANIEL J. SEARS and JOHN M. KOBAYASHI, being duly sworn, depose and state as follows:

1. I, W. Allen Spurgeon, am First Assistant United States Attorney for the District of Colorado. I have been employed in the office of James L. Treece, United States Attorney for the District of Colorado, continuously since August 17, 1970. I am familiar with and have had principal responsibility for all investigations conducted by the United States Attorney's office for the District of Colorado regarding John M. King and A. Rowland Boucher. Mr. J. Terry Wiggins, Mr. Daniel J. Sears and Mr. John M. Kobayashi, all presently employed as Assistant United States Attorneys in the District of Colorado, have assisted me in conducting these investigations. I am familiar with all investigations involving John M. King and A. Rowland Boucher which have been referred to this office during my tenure.

2. This affidavit is submitted at the request of Assistant United States Attorney John R. Wing in connection with motions filed in the above-entitled case alleging, inter alia, that the United States abused its authority in initially presenting the evidence in the above-entitled case to a grand jury in the District of Colorado and, after failing to obtain an indictment, presenting the same evidence to a grand jury in the Southern District of New York. W. Allen Spurgeon, J. Terry Wiggins, Daniel J. Sears and John M. Kobayashi have not seen a copy of the motions containing such allegations, but W. Allen Spurgeon and Daniel J. Sears have been advised of their content by John R. Wing.

3. W. Allen Spurgeon and Daniel J. Sears have read a copy of the indictment from the United States District Court for the Southern District of New York captioned United States of America v. John M. King and A. Rowland Boucher, defendants, Indictment 75-Cr. No number appears on the copy of the indictment following Cr., but W. Allen Spurgeon and Daniel J. Sears have been informed by telephone by Mr. Wing that this copy is identical to the original indictment filed in the United States District Court for the Southern District of New York. W. Allen Spurgeon and Daniel J. Sears have discussed the matters contained in the indictment with Mr. Wing to a limited extent by telephone.

4. On April 27, 1973, the Department of Justice referred two cases for prosecutive consideration to the United States Attorney for the District of Colorado. The two cases involved John M. King and A. Rowland Boucher and the Imperial American Resource Fund, Inc., the Imperial American Management Company, Colorado Corporation, Denver Corporation, and King Resources Company. The focus of the ensuing grand jury investigations was the attempted takeover of Investors Overseas Services and the sale of limited partnership interests in Imperial American Resource Fund. At no time did the grand jury investigations focus on Fund of Funds and the evaluation and sale of Arctic properties. At no time was an indictment presented to the grand jury in the United States District Court for the District of Colorado involving Fund of Funds or the Arctic properties.

W. ALLEN SPURGEON

A. ROWLAND BOUCHER

DANIEL J. SEARS

JOHN M. KING

Subscribed and sworn before me this 17th day of April, 1975.

Notary Public

My commission expires [illegible], 1976.

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
AUG 26 1970

In the Matter of

JOHN M. KING
THE COLORADO CORPORATION
THE DENVER CORPORATION
IMPERIAL-AMERICAN MANAGEMENT COMPANY
IMPERIAL-AMERICAN RESOURCES FUND, INC.
ROYAL RESOURCES CORPORATION
ROYAL RESOURCES EXPLORATION, INC.
KING RESOURCES COMPANY
DENVER SECURITIES CORPORATION
REGENCY MANAGEMENT COMPANY
REGENCY INCOME COMPANY
REGENCY INVESTORS COMPANY
GENERAL AMERICAN DEVELOPMENT CORPORATION
K-R FUNDS, INC.

File No. D-1407

ORDER DIRECTING EXAMINATION AND PRIVATE INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. The Denver Corporation ("Denver"), a corporation with its principal place of business at Brooks Tower Building, Denver, Colorado, has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") since September 8, 1966.

B. Denver is a member of the National Association of Securities Dealers, Inc., a national securities association, registered pursuant to Section 15A of the Exchange Act.

C. The securities of King Resources Company ("King Resources") are registered with the Commission under Section 12 of the Exchange Act and are traded on the over-the-counter market. On January 15, 1970 King Resources filed a registration statement on Form S-1 under the Securities Act of 1933, as amended ("Securities Act") (File No. 2-35991) relating to a proposed pledge of 500,000 shares of common stock by certain shareholders to Dempsey-Tegeler Co., Inc.

EXHIBIT B

D. John M. King ("King") owns approximately 16% of the outstanding stock of King Resources and until August 13, 1970 was Chairman of its Board of Directors.

E. K-R Funds, Inc. is a wholly-owned subsidiary of King Resources which also manages the investment progress of K-R Funds, Inc.

F. Imperial-American Resources Fund, Inc. ("Imperial-American Resources") is a wholly-owned subsidiary of Imperial-American Management Company ("Imperial-American Management") which manages it and, which, in turn, is a wholly-owned subsidiary of Colorado Corporation ("Colorado"). Imperial-American Resources filed a registration statement on Form S-1 under the Securities Act (File No. 2-35163) on October 25, 1969 covering a proposed public offering of $250,000,000 of oil and gas participation plans, investment contracts and pre-organization subscriptions in limited partnerships. The registration statement was declared effective on June 15, 1970.

G. Royal Resources Exploration, Inc. ("Royal Resources Exploration") is a wholly-owned subsidiary of Royal Resources Corporation which, in turn, is a wholly-owned subsidiary of Colorado. Royal Resources Exploration filed a registration statement on Form S-1 under the Securities Act (File No. 2-35503) on December 31, 1969 covering a proposed public offering of $100,000,000 of oil and gas participation plans, investment contracts and pre-organization subscriptions in limited partnerships. The registration statement was declared effective on May 14, 1970.

H. Denver is a wholly-owned subsidiary of Colorado which, in turn, is controlled by King.

I. King Resources has failed to file with the Commission certain reports required to be filed pursuant to Section 13(a) of the Securities Exchange Act

II

Members of the staff have reported to the Commission information which tends to show that:

A. King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration, King Resources, Denver Securities Corporation Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc. and others have been and are offering to sell, selling and delivering after sale to members of the public certain securities, namely, the securities of King Resources, Imperial-American Resources and Royal Resources Exploration.

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B. While engaged in the offer, purchase and sale of certain securities, namely oil and gas participation plans, investment contracts and pre-organization subscriptions issued by Imperial-American Resources and Royal Resources Exploration, King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration, King Resources, Denver Securities Corporation, Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc. and others have been and are making untrue statements of material facts and have omitted and are omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things:

1. The safety of an investment in said securities;
2. The value of said securities; and
3. The ability of the purchasers of said securities to obtain the redemption value thereof.

C. King, Colorado, Denver, Imperial-American Management, Imperial-American Resources, Royal Resources Corporation, Royal Resources Exploration King Resources, Denver Securities Corporation, Regency Management Company, Regency Income Company, Regency Investors Company, General American Development Corporation, K-R Funds, Inc., and others employed devices schemes and artifices to defraud and engaged in transactions, acts, practices and courses of business which operated as fraud and a deceit upon the public in connection with solicitations to purchase, purchases and sales of said securities.

D. While engaged in the offer, sale and delivery of said securities, such persons, directly and indirectly, made use of the mails and means and instruments of transportation and communication in interstate commerce, and of the means and instrumentalities of interstate commerce.

E. Colorado and others, directly and indirectly, effected transactions in and induced and attempted to induce the purchase and sale of securities at a time when Colorado was not registered with the Commission as a broker-dealer as required by Section 15(a) of the Exchange Act.

F. [illegible] on or about July 1, 1970, Denver and Colorado, directly and indirectly effected transactions in and induced and attempted to induce the purchase and sale of securities at a time when the aggregate indebtedness of Denver and Colorado to all persons may have exceeded 2,000 per cent of their respective net capital, computed in accordance with the provisions of Rule 15(c)(3)-1 promulgated under Section 15(c)(3) of the Exchange Act.

G. The registration statements of King Resources (referred to in Paragraph [illegible] above) of Imperial American Resources (referred to in Paragraph [illegible] above) and of Royal Resources Exploration (referred to in Paragraph 10 above) contain untrue statements of material facts or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading with respect to:

1. Item 9, Description of Business;
2. Item 20, Interest of Management and others in Certain Transactions.

III

The Commission having considered the foregoing, deems it appropriate and necessary that an examination and private investigation be made for the following purposes:

1. to ascertain the facts concerning the matters set forth in paragraph II C with respect of King Resources;

2. to determine with respect to King Resources whether an order under Section 15(c)(4) of the Exchange Act should issue;

3. to determine whether there have been possible violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b); 15(a), 15(c)(3) of the Exchange Act and Rules 10b-5 and 15c3-1 thereunder.

IT IS ORDERED, pursuant to the provisions of Sections 8(a) and 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934, that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage in any of the reported acts or practices or in any acts or practices of similar purport or object; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 19(b) of the Securities Act of 1933 and Section 21(b) of the Securities Act of 1933 and Section 21(b) of the Securities Exchange Act of 1934, that for the purpose of such investigation, Donald J. Stocking, Joseph F. Krys, John J. Kelly, Jr., John E. Jones, Donald N. Malavsky, Edward J. Leavitt, Ralph H. Tracy, Richard B. Besson, Leonard H. Rosson, Theodore Levine, James E. Newton, John W. Fegan, James E. Sims and each of them, is hereby designated an officer of this Commission and empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Orval DuBois
Secretary

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EXHIBIT C

United States Department of Justice
UNITED STATES ATTORNEY
DISTRICT OF COLORADO
323 U.S. COURT HOUSE, DRAWER 3615
TELEPHONE (303) 837-4184
DENVER, COLORADO 80202

April 22, 1974

Mr. John King
26 Sunset Drive
Englewood, Colorado 80215

RE: Appearance Before Federal Grand Jury

Dear Mr. King:

To insure that you have adequate time to arrange for and confer with counsel prior to your appearance before the federal grand jury as scheduled for 8:30 a.m., May 15, 1974, this is to advise you in advance that you are a subject of the grand jury's investigation into possible violations of various statutes of the United States including but not limited to Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10 b-5, and the mail and wire fraud provisions pursuant to 18, United States Code, Section 1341 and 1343. The matters about which you will be interrogated include but will not be limited to the alleged transfer of Imperial American Resource properties to Lark Oil Company in December, 1958, and to John Mecom in 1969; the calculation and publication of cash surrender values for Imperial American Resources from 1966 to 1971; the sale and purchase of Imperial American net operating profits interest (N. C. P. I.); land sales and/or transfers between the Colorado Corporation, King Resources, Imperial American Resources and/or Investors Overseas Services; the attempted take-over of Investors Overseas Services in 1970; any correspondence or communications including official corporate filings between yourself, King Resources, Imperial American Resources, on the one hand, and the Securities and Exchange Commission on the other.

Prior to proceeding May 15, 1974, you will again be advised that you are a subject of the grand jury's investigation, that you have a right to remain silent, that anything you say can and will be used against you in a court of law or other proceeding, that you have a right to the presence of counsel outside the grand jury room to confer with and seek counsel during your appearance, and that if you cannot afford counsel, one will be appointed to represent you during the proceedings. You will be asked if you understand each

EXHIBIT "A"
(Pencil marks by counsel)

EXHIBIT C

and every one of those rights and if you do, whether you wish to waive the rights and testify before the grand jury. You will also be advised that should you waive your rights and testify, you will be subject to the penalties of perjury under 18, United States Code, Sections 1621, 1623, and/or obstruction of justice under the statutes of the United States for willfully testifying falsely or willfully withholding information necessary to the grand jury's investigation.

We are confident that this letter will give you sufficient notice to prepare for your May 15, 1974, appearance. If you have any further questions, feel free to contact us, or, if you have counsel, please communicate through him.

Very truly yours,

JAMES L. TREECE
United States Attorney
By:

DANIEL J. SEARS
Assistant United States Attorney

W. ALLEN SPURGEON
Assistant United States Attorney

J. TERRY HIGGINS
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-against-	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KING'S MOTION TO DISMISS THE INDICTMENT

BARRETT SMITH SCHAPIRO & SIMON
Attorneys for Defendant
JOHN M. KING
26 Broadway
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Of Counsel:

Michael F. Armstrong
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 75 Cr. 70 (MEF)

JOHN M. KING and :
A. ROWLAND BOUCHER,

Defendants. :

----------x

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT KING'S MOTION
TO DISMISS THE INDICTMENT

This memorandum is respectfully submitted on behalf of the defendant John M. King in support of his motion under Rule 12(b) of the Federal Rules of Criminal Procedure to dismiss the indictment or, in the alternative, for a hearing, on the grounds that evidence upon which the indictment is based was obtained as a esult of testimony given by King under immunity in his bankruptcy proceedings.

Summary of Argument

Between June 30, 1971 and June 14, 1973, before the Government's investigation of this case had begun, King testified on seven different occasions in his bankruptcy proceedings in Denver, Colorado. During these proceedings, King testified about many matters which relate to the evidence which the Govern-

ment now proposes to introduce in this case, including the Arctic sales which form the basis of the prosecution. Under Section 7(a)(10) of the Bankruptcy Act (11 U.S.C. §25(10)), no evidence directly or indirectly derived from such testimony may be offered in evidence in a criminal proceeding against King.

In the course of King's bankruptcy testimony, no apparent attempt was made to comply with specific procedures established by the Government to guard against tainting criminal investigations. Present during some or all of King's testimony were: representatives of the Justice Department; an attorney from the United States Attorney's Office in Denver, Colorado (which conducted a grand jury investigation of King dealing with matters both covered in the bankruptcy testimony and at issue in this case); and law firms whose documents have been examined by the prosecutors in this case. The SEC attorney now assigned to this case was then working closely with the Denver United States Attorney's Office in its investigation.

It is respectfully submitted that the Government's evidence necessarily includes material which was derived from King during his bankruptcy proceedings and the indictment on which that evidence is based should be dismissed. In the alternative, a hearing should be ordered to determine whether the Government can prove that its evidence is without taint.

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The Bankruptcy Act's Immunity Provision

Under Section 7(a) of the Bankruptcy Act (11 U.S.C. §25), a bankrupt is compelled to attend the first meeting of his creditors "and at such other times as the court shall order" and is required "at the first meeting of his creditors . . . and at such other times as the court shall order" to "submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge." The statute explicitly provides, however, that "no testimony, or any evidence which is directly or indirectly derived from such testimony . . . shall be offered in evidence against him in any criminal proceeding . . ." (emphasis added).

King need show only that he testified under immunity "in order to shift to the government the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources." Kastiger v. United States, 406 U.S. 441, 461, reh. denied, 408 U.S. 931 (1972).

> "[This burden] is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony." (Id. at 460)

The Court made it clear that any use whatsoever of the immunized testimony is prohibited.

> "Immunity from the use of compelled testimony, as well as evidence derived directly and indirectly therefrom, * * * prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness." (Id. at 453, emphasis by the Court).

See also, Murphy v. Waterfront Commission, 378 U.S. 52, 79 (1964).

Thus, it was unnecessary, for purposes of this motion, that the immunized testimony be shown to the grand jury. Any use of it whatsoever by the prosecutor is barred. United States v. McDaniel, 482 F.2d 305 (8th Cir. 1973). King's testimony could not be used to gain an "investigative lead", United States v. Kastiger, supra at 460; Albertson v. Subversive Activities Control Board, 382 U.S. 70, 80 (1965). Nor is the Government allowed to derive sources of information from such testimony. Ullman v. United States, 350 U.S. 422, 437 (1956); Arnstein v. McCarthy, 254 U.S. 71, 73 (1920). The prosecutor is also barred from using "evidence obtained by focusing on a witness as a result of his compelled disclosures". Kastiger, supra at 460. In United States v. McDaniel, supra, the court makes it clear that once the prosecutor's mind has been exposed to forbidden testimony, it is virtually impossible for the Government to satisfy its burden of proving that the testimony was not used

"in some significant way short of introducing the tainted evidence." (Id. at 311). The Court explains:

> "Such use could conceivably include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." Ibid.

In the circumstances of this complex and oft-investigated case, it is clearly impossible for the Government to meet its burden.

King's Bankruptcy Testimony

Proceedings commenced under Chapter XI of the Bankruptcy Act with respect to John King and his wife on June 1, 1971. In the Matter of John McCandish King, Debtor, and Carylyn Becker King, Debtor, Case Nos. 71-B-1630 and 71-B-1631 (D.C. Col. 1971).

On June 30, 1971, King gave testimony before the Referee in Bankruptcy at the first session of the first meeting of creditors, pursuant to section 7(a) of the Bankruptcy Act (11 U.S.C. 25(a)). He appeared thereafter in the same proceedings on July 1 and 2 and August 11, 1971. On June 7, 8 and 14, 1973 he testified further in depositions conducted by the Department of Justice pursuant to Section 21(a) of the Bankruptcy Act (11 U.S.C. 44(a)).*

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* The immunity conferred by this provision reaches not only King's Section 7(a) testimony but his section 21(a) deposition as well. See United States v. Weisman, 219 F.2d 837 (2d Cir. 1955).

King's testimony, covering a total of 693 transcript pages, dealt in specific detail with his business and financial dealings during the years prior to his bankruptcy. His testimony was laced with sometimes lengthy references to matters which, according to the Government's recently filed Trial Memorandum, will be matters of proof in this trial.* On the first day, for example, he testified for twenty transcript pages on the central issue in this case - the Arctic leases and the transactions relating to them in 1969. Throughout, King gave testimony, sometimes in detail and sometimes in passing, with respect to many other transactions, individuals, procedures, companies, and personal opinions which certainly would have provided leads to governmental investigators and, as it now appears from the Government's expansive statement of its intended proof, will be part of the evidence introduced by the Government at trial.

As set forth in detail in the affidavit submitted herewith, King's testimony included the following:

1. Arctic Transactions (the central issue in this case): the relationship between KRC and FOF with respect to the Arctic permits; KRC's initial purchase thereof and optimism about the value of the interests; the geology of the Arctic area, including the fact that much of KRC's interests were offshore;

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* In addition, defendant's counsel has been informed by bankruptcy counsel representing King at the time that he believes King testified on other occasions when transcript was not ordered.

KRC's sale of a 50% interest to FOF; KRC's expenditures in the Arctic; the December 1969 sale of Arctic interests; the 1970 Arctic transaction between KRC and Sun Oil.

2. Relationships with FOF and Affiliates: original contacts with IOS; negotations with Cowett and Cornfeld; lack of written agreements between KRC and FOF on sales of natural resource properties; Colorado Corp.'s receipt of 25% NOPI interest in the 12-1/2% NOPI received by KRC on properties sold by KRC to FOF; sales of Colorado Corp. NOPI's to IOS Bank and IOS management.

3. Transactions with Lakeshore Associates (purchaser in December 1969 Arctic sale): King's position in Lakeshore and that company's financial condition; King's $1,000,000 loan to Lakeshore and use by King of $400,000 Lakeshore note as downpayment on stock of Colorado Corp. owned by family trusts.

4. Transactions with Robert Raff (principal in Fox-Raff, Inc., a purchaser in December 1968 of 10% undivided interests in FOF domestic oil and uranium properties): loan made by King to Raff and lack of post-petition efforts regarding Raff's notes; King's belief that Raff's note is uncollectible.

5. Colorado Corp. Complex (sellers to FOF and involved in Lark Oil transaction, an alleged "similar act"): relationships among Colorado Corp., Imperial American and Royal Resources; explanation of 25% NOPI; financial aspects

of the limited partnerships; King's relationship to these companies; King's purchase of $6 million of NOPI from Colorado Corp.; discussed Colorado Corp.'s sales of NOPI's in 1969 and Colorado Corp.'s financial difficulties in late 1970.

6. Ehlers and Wolcott (involved in alleged "similar act" which the Government has indicated it might offer in rebuttal): explains agreement to repurchase Ehler's NOPI interest at 55% of Ehler's cost if underlying properties proved worthless; discussions between King and Wolcott about latter's cash needs.

7. Lowry (one of the Government's key witnesses): Lowry's role with respect to understanding agreements between parties.

8. General Matters: delegation of authority to subordinates; personal records; establishment of Bahamian trusts; history of KRC and King's acquistion of KRC stock; King's travel schedule; King's personal income; procedure with respect to incoming mail.

All of this evidence was revealed by King before the Government, according to the prosecutor's sworn statements, had begun any investigation into the matters which are the subject of this prosecution.

The Government's Tainted Evidence

According to Stanley Sporkin, SEC Director of the Division of Enforcement, there was no investigation whatsoever by the SEC of the matters with which this indictment is

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concerned until July 1973, which happened to be one month after King completed his bankruptcy testimony (Affidavit of John Wing attached as Exhibit B to the affidavit submitted herewith, hereinafter referred to as "Wing Aff't").

At about the same time, on April 27, 1973, the SEC referred two cases to the United States Attorney in Denver, Colorado which the Government has claimed were unrelated to the SEC investigation leading to this indictment. These cases involved Imperial American, Colorado Corporation, King Resources Company, the attempted IOS takeover, and the sale of limited partnership interests in Imperial American Resources Fund (affidavit of W. Allen Spurgeon, First Assistant U.S. Attorney, District of Colorado, et al., dated April 17, 1975, attached to Wing Aff't, par. 4). A grand jury investigation was commenced with respect to these matters and apparently continued for more than a year. No indictment was returned.

It is now obvious that this Denver grand jury investigation, conducted by the Denver United States Attorney's Office in close cooperation with the SEC, was directly concerned with matters which the prosecutor has decided to include in his proof in this case. In a letter to King from the United States Attorney dated April 22, 1974 with respect to his requested appearance before the Denver grand jury (attached as Exhibit C to the affidavit submitted herewith), King was informed of the matters about which he was to be interrogated:

> "the alleged transfer of Imperial American Resource properties to Lark Oil Company in December, 1968, and to John Mecom in 1969; the calculation and publication of cash

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> surrender values for Imperial American Resources from 1966 to 1971; the sale and purchase of Imperial American net operating profits interest (N.O.P.I.); land sales and/or transfers between the Colorado Corporation, King Resources, Imperial American Resources and/or Investors Overseas Services in 1970; the attempted takeover of Investors Overseas Services in 1970; any correspondence or communications including official corporate filings between yourself, King Resources, Imperial American Resources, on the one hand, and the Securities and Exchange Commission on the other."

With the exception of the IOS takeover, all of the subjects mentioned in this letter have been stated by the Government to be part of their proof in this case. For example, the letter mentions prominently the two so-called "similar acts" which the Government intends to prove -- the Lark oil transaction and the Imperial American NOPI sales. Moreover, the time period under investigation by the Denver grand jury was the same as that covered in this case and the same individuals and companies were necessarily under scrutiny in both investigations.

This factual overlap between the Denver and New York cases is significant for purposes of this motion because of an overlap in governmental personnel which connects King's bankruptcy testimony with the Denver investigation and, in turn, with this case.

An Assistant United States Attorney from the Denver office running the grand jury investigation was present during King's bankruptcy testimony on three occasions, July 1, 1971, June 7 and 14, 1973, and may be presumed to have had access to the entire transcript.

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At that time, the Denver United States Attorney had been fully apprised of the problems involved in conducting criminal investigations of those involved in bankruptcy. In a memorandum dated April 8, 1971, to "All United States Attorneys" (attached as Exhibit A to the affidavit submitted herewith), the Department of Justice noted that the 1970 amendment of the Bankruptcy Act "had the effect of barring the use of any leads derived from the testimony of the bankrupt in a criminal investigation or prosecution." The memorandum, distributed just before the King bankruptcy testimony began, set forth procedures recommended to referees by the Bankruptcy Division of the United States courts. Under these procedures, when a bankrupt testifies "and a criminal investigation is underway or is anticipated" the referee is to (1) order that no one may receive the testimony without first requesting permission and signing an appropriate record, and (2) advise "trustees, receivers, creditors, attorneys and other persons who have heard the bankrupt's testimony that, in the event they are interviewed concerning criminal aspects of the case, no disclosure should be made concerning the content of the immunized testimony of the bankrupt."*

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* The procedures further provide careful steps to be taken in referring cases - but not testimony or the fruits thereof - where the "only evidence of criminality is developed in the bankrupt's testimony." An interesting reference is made to the potential argument that the referral itself is barred but the memorandum concludes that despite this problem "in cases of significant import, at least, the Department has a responsibility to investigate."

There is no indication in the record that the referee in King's bankruptcy followed any of these procedures, or that the representative of the U.S. Attorney's office who was present called them to his attention.

Moreover, the memorandum imposes directly upon the United States Attorney the obligation to monitor sensitive bankruptcy proceedings:

> "In any instances in which a bankruptcy criminal investigation is initiated on the basis of information derived from sources other than the bankruptcy referee or a bankruptcy proceeding, United States Attorneys should be alert to apprise the bankruptcy referee of the investigation in order that, if necessary, he may institute the above safeguards."

Although the Denver inquiry was not a "bankruptcy criminal investigation", the United States Attorney must have been aware that the same problems existed for him as in a bankruptcy case. There is no evidence that the Denver United States Attorney notified the bankruptcy referee when he received the criminal references on April 27, 1973. Instead, he continued to authorize an assistant to observe the proceedings.

It is clear that the evidence gathered in the Denver investigation, with whatever taint resulted from exposure to King's bankruptcy, was intermingled with the evidence upon which the indictment in this case was based. SEC attorney Thomson von Stein, who apparently has devoted much of his recent career to investigating John King, is the New York prosecutor's chief investigative assistant in this case and was involved very

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actively in the Denver inquiry. Many witnesses with whom defense counsel have spoken have reported that von Stein questioned them in detail, during the period of the Denver investigation, on the facts with which that inquiry was concerned. Moreover, the prosecutor has stated that the SEC investigation leading to the New York case began in July, 1973, almost the same time as the Denver case was referred to the United States Attorney. It is manifest that the SEC, in conducting two investigations in the same city, against the same targets, covering the same time period and dealing with many of the same transactions, would not have staffed these investigations with separate personnel who did not cooperate with each other.

The prosecutor's heavy reliance upon his SEC colleague is apparent. The SEC first referred this case to the Southern District of New York on September 27, 1974, after a 14-month investigation "interviewing more than 80 people and reviewing thousands of documents." Wing Aff't p. 5. A grand jury was convened a little more than a month later and the indictment was returned a little more than two months after that. Ibid. There can be no doubt, in this highly complex case, that the prosecutor derived much if not virtually all of his knowledge of the case through Mr. von Stein, who in turn must have derived much of his knowledge from the tainted Denver investigation.

The taint in this case is not limited to that created

by Mr. von Stein's participation in both the Denver and New York investigations. There are also direct connections between the bankruptcy testimony and the Government's proof.

Perhaps of even more significance than the Denver grand jury-von Stein link is the fact that at the first session of the first meeting of creditors an attorney was present from the New York law firm Donovan Leisure Newton & Irvine. Donovan Leisure represented the United Bank of Denver and presumably had access to the transcripts of later sessions. At this time, the Donovan Leisure firm also represented the Board of Directors of Fund of Funds in connection with litigation against KRC and conducted an extensive investigation of the very facts which are the subject of this criminal prosecution. The prosecutor has admittedly made extensive use of Donovan Leisure's files and many of the documents produced to the defendants by the Government as evidence it intends to offer at trial bear the stamp of the Donovan Leisure firm.

The defendants have no way of knowing whether Donovan Leisure attorneys who were privy to King's bankruptcy testimony in their representation of one of his creditors were the same attorneys engaged in compiling information which later was made available to the prosecutor in this case or, alternatively, whether the bankruptcy attorneys shared their information as to investigative leads with colleagues working on the FOF litigation. There would, of course, have been no reason for the attorneys at Donovan Leisure to maintain

any separation between the two matters since the immunity provision in the Bankruptcy Act extends only to criminal cases.

A similar situation may exist with respect to the Denver law firm, Holme Roberts & Owen. An attorney from that firm was also present at the first session of the first meeting of creditors and was present thereafter on August 11, 1971. The defendants have received a large number of documents from the prosecutor which he intends to offer in evidence containing the stamp of this law firm, indicating that their files have also been made available to the Government.

Finally, there is a possible source of taint in the fact that attorneys from the Department of Justice, Tax Division, were present at all of the sessions of King's bankruptcy testimony and representatives of the Internal Revenue Service were present at some of them.

The Indictment Should Be Dismissed

It is appropriate to raise the question of a violation of immunity in a motion to dismiss the indictment prior to trial, United States v. Meyers, 339 F. Supp. 1154 (E.D. Pa. 1972), and it is well established that where the evidence upon which an indictment is based is found to have been obtained by the Government in violation of a defendant's constitutional rights, the indictment must be dismissed. Jones v. United States, 342 F.2d 863 (D.C. Cir. 1964); United States v. Tane, 329 F.2d

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848 (2d Cir. 1964); United States v. Laughlin, 226 F.Supp. 112 (D.C. Cir. 1964), cited with approval in companion case, Laughlin v. United States, 385 F.2d 287, 291 (1967); United States v. Salih, 287 F. 763 (D.C. Mass. 1923).

The taint in this case affects all of the evidence since it is at the source. The Government did not start its investigation until well after King gave his testimony and the prosecutor, in constructing his case, has been exposed to that testimony through a variety of avenues. King testified directly about the Arctic transactions which are at the heart of the charges in this case as well as many other matters, individuals, companies and transactions which provided leads for the lengthy investigations which followed. Under such circumstances, the entire case has been infected and the indictment should be dismissed. United States v. McDaniel, supra; United States v. Dornau, 359 F. Supp. 684, 687 (S.D.N.Y. 1973) (rev'd on other grounds, 491 F.2d 473 (1974)). In Dornau, which was cited in McDaniel, the Court said:

> "It appears to me that once the subject matter was touched upon in the privileged testimony, and the prosecutor had read it, he could have used it in a variety of ways in this criminal prosecution. The possibility of such use, and the impossibility of clearly showing that the use did not occur calls for the holding in this case that the defendants were denied the constitutional protection that their silence would have given them."
> 359 F. Supp. at 687

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The principle, as stated in Kastiger v. United States, supra, is that a person whose testimony under immunity has been used by the Government must be restored to the position he would have been in if he had asserted his constitutional right to remain silent. 406 U.S. at 458-59. This can only be accomplished by dismissing the indictment.

The undoubted fact that the prosecutor was innocent of any knowledge of the taint actually exacerbates the harm to the defendant and increases the need for dismissing the indictment. As the court in McDaniel pointed out, where the prosecutor "perceive[s] no reason to segregate [forbidden] testimony from his other sources of information . . . the government is confronted with an insurmountable burden in discharging the heavy burden imposed by Kastiger." 482 F.2d at 311.

If the Indictment Is Not Dismissed, A Hearing Is Appropriate

If the Court decides not to dismiss the indictment on the basis of facts discussed above, a hearing must be held at which the Government must produce witnesses to satisfy the burden set forth in Kastiger v. United States. The defendant contends that ample support for his motion is contained in those portions of his bankruptcy testimony which have been transcribed. The probable existence of further untranscribed testimony, as indicated by King's bankruptcy

counsel, makes a hearing imperative if the indictment is not dismissed.

Prior to that hearing, defendants are entitled to inspect the grand jury minutes of both the New York and the Denver grand juries and transcripts of SEC interrogations in both investigations.

> "Unless the defendant is aware of the evidence which the prosecutor has presented to the grand jury, he cannot effectively challenge the sufficiency of the claimed independent proof at any pretrial hearing." United States v. Dornau, 356 F. Supp. 1091, 1100 (S.D.N.Y. 1973), rev'd on other grounds, 491 F.2d 473 (1974), cert. den., 419 U.S. 872 (1974).

CONCLUSION

For the reasons set forth herein and in the accompanying affidavit, it is respectfully submitted that the Court should dismiss the indictment or, in the alternative, should order a hearing after granting the defendant the opportunity to examine all testimony taken before the grand jury or by governmental investigative agencies.

Respectfully submitted,

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Of Counsel:

Michael F. Armstrong
Warren H. Colodner

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- v -	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

GOVERNMENT'S MEMORANDUM OF LAW
IN OPPOSITION TO THE DEFENDANTS'
MOTIONS TO DISMISS THE INDICTMENT

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

PAUL VIZCARRONDO, JR.
JOHN H. WING,
Assistant United States Attorneys,
Of Counsel.

Exhibit B

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PV:dl

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- v -	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

GOVERNMENT'S MEMORANDUM OF LAW
IN OPPOSITION TO THE DEFENDANTS'
MOTIONS TO DISMISS THE INDICTMENT

The defendants have filed, on the eve of trial, motions to dismiss the indictment as having been obtained on the basis of their immunized testimony at bankruptcy hearings. The motions should be denied because they are untimely, because the testimony upon which Boucher's motion is primarily based was not given under a grant of immunity, and because the Government did not obtain this indictment on the basis of any "tainted" testimony.

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The Defendants' Motions Should Be Denied as Untimely

The indictment in this case was filed on January 20, 1975, and this Court gave the defendants forty-five days to file motions. Each defendant has been represented by able counsel throughout these proceedings, and each filed lengthy discovery and substantive motions on the appropriate date. Now, on the eve of trial and more than one year after the date set for the filing of motions, the defendants have made the instant motions to dismiss the indictment. Both motions are based upon claims and allegations that were within the defendants' knowledge when the motions should have been filed last year.

Rule 12(f) of the Federal Rules of Criminal Procedure provides as follows:

> "Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver."

Motions that must be raised prior to trial, under Rule 12(b), include "[d]efenses and objections based on defects in the institution of the prosecution;" "[d]efenses and objections based on defects in the indictment . . . ;" and "[m]otions to suppress evidence."

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The defendants have set forth absolutely no reason why these motions, based upon factual allegations of which they have been cognizant since the filing of this indictment, could not have been filed at the proper time over one year ago. To require the Government to undergo the burden of refuting the defendants' allegations at this time, less than one week before trial, is unfair and unjustifiable. The defendants' motions should be denied, pursuant to Rule 12(f), as being untimely.

Boucher did Not Testify in August 1973 Under a Grant of Immunity

The defendant Boucher contends that the indictment should be dismissed as to him because it is based on evidence obtained as a result of his deposition testimony taken on August 6, 1973, by John S. Pfeiffer, attorney for the Trustee of King Resources Company in proceedings for its reorganization under Chapter X of the Bankruptcy Act. It is Boucher's further contention that he was testifying on that occasion under a grant of immunity, pursuant to section 7(a)(10) of the Bankruptcy Act, 11 U.S.C. §25(a)(10). That the instant indictment or any evidence that the Government will introduce at trial was obtained as a result of that testimony is, the Government submits, demonstrably untrue. More fundamentally, however,

Boucher's motion is without merit because he did not have immunity when he testified in August 1973 pursuant to the provisions of section 167 of the Bankruptcy Act, 11 U.S.C. §567 (1970), to which section 7(a)(10) immunity does not apply.

At the beginning of his examination of Boucher, Mr. Pfeiffer made the following statement:

> "MR. PFEIFFER: As you know, I am the attorney for Charles A. Baer, the Trustee, and I am taking your deposition pursuant to the order of the Court which is dated October 27, 1971, appointing Mr. Baer as Trustee, and in that order it directed him pursuant to Section 167 of the Bankruptcy Act that he was to forthwith investigate the acts, conduct, property, liabilities and financial condition of the debtor, which is King Resources Company; the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan and report thereon to the judge; and to examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters or any of them; and shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities and to any causes of action available to the estate; and shall at the earliest date practicable, prepare and submit a brief statement of his investigation of the property, liabilities and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, in such form as the judge may direct, to the creditors, stockholders, indentured trustees, Securities and Exchange Commission,

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and such other persons as the judge may designate.

"I have asked you to appear here today for the purposes of taking your deposition pursuant to Section 167 and I note that you are here without an attorney. The record should reflect that I have previously discussed this matter with a Mr. Tom Eitel, an attorney in Englewood, who I understand has talked to Mr. Boucher about this matter. At one time Mr. Eitel advised me that he would be representing Mr. Boucher in this matter.

"I have requested that Mr. Boucher be represented by an attorney and note that he isn't here. I would like him to state for the record after I have concluded here whether he desires an attorney or not but I would like to make it quite clear to you that if you don't understand any of my questions, make sure you make me repeat them and if at any time you have any hesitancy about answering any questions, please feel free to interrupt and we can postpone it.

"All statements you make may be used against you. You have a right to have an attorney and all the various guarantees, and I am at this juncture here investigating the officers and directors and their activities, which means that I am investigating your conduct, too. With that in mind, do you desire to go on now without an attorney?

"THE DEPONENT: I am prepared to go on."

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Boucher bases his claim that he was immunized at the time of his August 1973 testimony on the provisions of section 7 of the Bankruptcy Act, 11 U.S.C. §25 (1970), which is part of the chapters of the Bankruptcy Act dealing with "straight bankruptcy." Section 7(a)(10) states:

> "The bankrupt shall . . . at the first meeting of his creditors, at the hearing upon objections, if any, to his discharge and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; but no testimony, or any evidence which is directly or indirectly derived from such testimony given by him shall be offered in evidence against him in any criminal proceedings, except such testimony as may be given by him in the hearing upon objections to his discharge . . . ."

Collier has described the purpose of section 7(a)(10) as follows:

> "Some opportunity for examination of the bankrupt is essential for a proper application of the law, and it has existed since the very earliest of the English bankruptcy statutes. The purpose of an examination under §7(a)(10) . . . is to assist in the administration of a bankrupt's property which the court undertakes after adjudication . . . .
>
> "Clause (10) was amended by the Act of 1938 so that the bankrupt

> must submit to an examination at the hearing upon objections, if any, to his discharge, in addition to the examination at the first meeting of his creditors and such other times as the court shall order."

1A Collier on Bankruptcy 1005-06 (14th ed. 1976). Thus, a section 7(a)(10) examination is a requirement that the bankrupt must undergo in order to receive a discharge in bankruptcy. Failure to appear for examination at a hearing as directed in section 7(a)(10) is grounds for denying discharge in bankruptcy, see 11 U.S.C. §32(a) (1970); Monroe v. Cussen, 454 F.2d 1151 (9th Cir.), cert. denied, 409 U.S. 846 (1972); Rose v. Mangeno, 111 F.2d 114 (2d Cir. 1940), as is refusal by the bankrupt to answer a material question when being examined. See, 11 U.S.C. §32(c)(6); In re Haidins, 237 F.2d 401 (7th Cir. 1961); Kaufman v. Hurwitz, 176 F.2d 210, 211 (4th Cir. 1949); In re Weinreb, 153 F.363 (2d Cir. 1907); In re Marcus, 149 F.Supp. 496, 497-500 (S.D.N.Y. 1957), aff'd, 253 F.2d 685 (2d Cir. 1958).* The immunity offered the bankrupt

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* Before section 7(a)(10) was amended as part of the Omnibus Crime Control Act of 1970 to provide for full use and derivative-use immunity coextensive with the Fifth Amendment privilege against compulsory self-incrimination, see Kastigar v. United States, 406 U.S. 441 (1972); Goldberg v. Weiner, 480 F.2d 1067, 1070-71 (9th Cir. 1973), the bankrupt had the right to refuse to answer questions on the basis of his right against self-incrimination. Arndstein v. McCarthy, 266 U.S. 34 (1924); Arndstein v. McCarthy, 254 U.S. 71 (1920). Even a refusal to answer on that ground, however, would bar his discharge in bankruptcy. See cases cited in text preceeding.**

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testifying pursuant to section 7(a)(10) has the "obvious purpose" of encouraging "complete cooperation through full disclosure" to effectuate the proper and full administration of his property. 1A Collier on Bankruptcy ¶7.21 at 1016.2 (14th ed. 1970).* The protection afforded by section 7(a)(10), however, extends only to the bankrupt himself. See White v. United States, 30 F.2d 590, 592 (1st Cir.), cert. denied, 279 U.S. 872 (1929); Kaplan v. United States, 7 F.2d 594, 597 (2d Cir.), cert. denied, 269 U.S. 582 (1925); Knoell v. United States, 239 F. 16, 21 (3rd Cir. 1917), appeal dismissed, 249 U.S. 648 (1918).

In the case of a corporation entering into bankruptcy, there is, of course, no person upon whom the duties imposed upon the bankrupt under section 7 would automatically devolve, as in the case of personal bankruptcy. Since someone must fulfill the section 7 obligations on behalf of the corporation -- including being available for examination under section 7(a)(10) -- section 7(b) provides that

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* As previously noted, prior to 1970 the immunity offered by section 7(a)(10) was only against the direct use of the bankrupt's testimony against him in a criminal proceeding, with the result that the bankrupt could still claim his Fifth Amendment privilege when testifying at a section 7(a)(10) hearing. As part of the Omnibus Crime Control Act of 1970, Pub.L.91-452, section 7(a)(10) was expanded to provide derivative-use as well as use immunity, in order to enable "effective displacement of the privilege against self-incrimination by granting protection co-extensive with the privilege." H.R.No.91-1549 (Sept. 30, 1970), 1970 U.S. Cong and Admin. News 4008.

> "[w]here the bankrupt is a corporation, its officers, the members of its board of directors or trustees or of other similar controlling bodies, its stockholders or members, or such of them as may be designated by the court, shall perform the duties imposed upon the bankrupt by this title."
> 18 U.S.C. §25(b) (1970).

The Second Circuit has held that section 7(a)(10) confers immunity on a bankrupt corporation's officer, director or shareholder only if he "is specifically designated to perform the bankrupt's duties." United States v. Castellana, 349 F.2d 264, 274 (2d Cir. 1965), cert. denied, 383 U.S. 928 (1966). Compare In re Bush Terminal Co., 102 F.2d 471 (2d Cir. 1939) (former director and shareholder of corporation petitioning for reorganization not obligated to be examined under section 7) with United States v. Weissman, 219 F.2d 837, 841 (2d Cir. 1955) ("We also think that the testimony of Weissman . . . was within the immunity granted by §7, sub. a(10) . . . . The referee had directed him to sign the schedules in bankruptcy, and that brought him within §7 sub. b., for he so became one of the 'stockholders or members' of "Charlotte' who was 'designated by the court' to 'perform the duties imposed upon the bankrupt.' . . . Our decision in In re Bush Terminal Co. . . . did not concern anyone who had been 'designated by the court' to perform the bankrupt's duties.")

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In the instant case, Boucher was not an additional trustee of KRC after October 1971, and when he was deposed by the attorney for KRC's trustee almost two years later, he was not under any court order to answer the attorney's questions.

More importantly, however, Boucher's testimony in August 1973 was taken pursuant to section 167 of the Bankruptcy Act, and section 7(a)(10) immunity was not available to him in that context. Section 167, which is part of Chapter X, the corporate reorganization chapter, of the Bankruptcy Act, provides in part as follows:

> "The trustee upon his appointment and qualification --
>
> "(1) shall, if the judge shall so direct, forthwith investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and report thereon to the judge;
>
> "(2) may, if the judge shall so direct, examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters or any of them;
>
> "(3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate . . . . "
> 18 U.S.C. §567 (1973).

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The trustee's attorney specifically stated at the beginning of the deposition that he was examining Boucher as a director and officer of the debtor, KRC, which he was empowered to do by the court's order and by section 167(2). This examination was in part in preparation of a report to the court on any "facts . . . pertaining to fraud, misconduct, mismanagement and irregularities, and to any courses of action available to the estate." Boucher had no obligation under section 7 or by court order, to testify except to the extent that the trustee was empowered to secure his and other witness' appearance by subpoena. He had a right to assert his Fifth Amendment privilege in response to any question, and if he had done so the trustee's attorney believes he would have stopped the deposition.* Boucher was not told by the trustee's attorney that he would receive any kind of immunity for his testimony. Moreover, if Boucher had refused to answer any questions, it would not have prevented KRC from entering into a plan of reorganization. In sum, the trustee's attorney deposed Boucher as a director and officer of the debtor, KRC, under section 167(2), and Boucher was not performing any duty imposed upon the bankrupt, as specified in section 7(b), that would avail him of the protection of section 7(a)(10).

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* Indeed, the trustee's attorney told Boucher on the record that "if at any time you have any hesitancy about answering any question, please feel free to interrupt and we can postpone it."

This analysis is fully supported by Collier:

> "It will be noted that under §167 officers or directors of the debtor do not appear on behalf of the debtor, but simply as witnesses, hence the privilege accorded the bankrupt and officers or directors appearing for a corporate bankrupt under §7a(10) of the Act... has no application."

6 Collier on Bankruptcy ¶7.19 at 1219 n.11 (14th ed. 1972). See also 11 Remington on Bankruptcy §4499.1 at 209 (K. Hayes rev. 1961). Cf. United States v. Epstein, 152 F.Supp. 583, 585-88 (E.D.Pa. 1957).

Thus, assuming arguendo that the Government did obtain evidence as a result of Boucher's August 1973 testimony, there would be no "taint" of the Government's case because Boucher did not have immunity when he testified.

The Indictment Was Not Obtained On The Basis of Any Evidence Derived From the Defendants' Bankruptcy Testimony

The Government can demonstrate through appropriate affidavits that the Government attorneys working on this case had absolutely no access, either directly or indirectly, to any of the supposedly immunized testimony* of the either defendant,

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* It is not claimed in either defendants' papers that any of his testimony in the bankruptcy proceedings was given after his assertion of his Fifth Amendment privilege against compulsory self-incrimination, or that he affirmatively invoked the protection of the bankruptcy immunity statute. It is arguable that the assertion of the privilege and the affirmative invocation of section 7(a)(10)'s protection is required before the witness is granted immunity. See United States v. Boyd, 404 F.Supp. 413, 416 (S.D.N.Y. 1975), aff'd, Dkt. No. 75-1393 (2d Cir. April 15, 1976), cf. [illegible]

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or any evidence obtained as a result of it, prior to the filing of this indictment. The Government has also submitted to the Court in camera an affidavit setting forth how, wholly independent of any bankruptcy testimony given by the defendants, the evidence presented to the grand jury was obtained. On the basis of those submissions, the motions to dismiss the indictment should be denied.

The defendants, relying on Kastigar v. United States, 406 U.S. 441 (1972), contend that the Government must demonstrate sources for its evidence before the grand jury wholly independent of each defendant's testimony in order to permit the trial to proceed. The situation in the instant case, however, is far different than that contemplated in Kastigar, which involved a grant of immunity to a witness before a federal grand jury, under 18 U.S.C.§§6002-6003, and where the danger the witness faced of subsequent prosecution based on his testimony would most likely be from the same prosecutorial agency that compelled his testimony. See, e.g., United States v. Kurzer, Dkt. No. 75-1437 (2d Cir. April 14, 1976). In the bankruptcy immunity situation, however, the testimony is not compelled by federal or any other prosecutors, and there is no reason to suppose that federal prosecutors would know of the contents of the testimony or of any evidence derived from it. Indeed, the affidavits submitted by the Government clearly show that in fact the prosecution here had no such knowledge prior to the filing of the indictment. To require the Government to lay bare its evidence prior to trial and establish an independent

basis for it merely because a defendant had testified in bankruptcy proceedings prior to indictment -- a not uncommon situation -- would impose an unwarranted burden and penalty upon the Government and give the defendant a windfall benefit that is neither intended by the bankruptcy immunity statute nor required by the Fifth Amendment. Requiring prior to trial any greater showing from the Government than non-access to the defendants' testimony or its fruits is unjustified, at least in the absence of any evidence by the defendants showing knowledge by the prosecutors of the contents of their testimony.* See United States v. First Western State Bank of Minot, N.D., 491 F.2d 780, 787 (8th Cir.), cert. denied, 419 U.S. U.S. 825 (1974); cf. United States v. Bianco, Dkt. No. 75-1244 (April 8, 1976), slip op. at 3112 n. 10.**

* The mere fact that attorneys from the IRS, the Tax Division of the Department of Justice, or the civil division of a United States Attorney's Office were present at some of King's hearings in connection with a civil tax case against King is no basis for imputing their knowledge of King's testimony to the prosecution here. See United States v. Quinn, 445 F.2d 940, 943-44 (2d Cir.), cert. denied, 404 U.S. 850 (1971). Moreover, the affidavits submitted by the Government refute the notion that any such information was transmitted to the prosecutors in this case.

** Even assuming arguendo that the indictment was obtained through the use of tainted evidence, it is doubtful that dismissal of the indictment would be warranted, United States v. Calandra, 414 U.S. 338, 345 (1974); United States v. Dornau, 491 F.2d 473, 481 n. 15 (2d Cir.), cert. denied, 419 U.S. 872 (1974).

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After the indictment was filed, the SEC attorney assisting the prosecution did obtain and read some materials that were derived from the defendants' bankruptcy testimony. However, to the best of his recollection these materials provided no new information concerning the issues in this case. Even if the Assistant United States Attorneys handling this case have read a portion of the transcripts of the defendants' testimony, suppression of evidence or dismissal of the case would not be warranted if, as we submit was the case here, the investigation of the case was substantially completed when the transcripts were read, the testimony contained nothing not previously known by the prosecution, and no use was made of the testimony. United States v. Bianco, Dkt. No. 75-1244 (2d Cir. April 8, 1976), slip op. at 3116-17 n. 14.* If, however, a hearing is necessary to establish that the Government's evidence

* The defendants rely heavily on the district court's opinion in United States v. Dornau, 359 F.Supp. 689 (S.D.N.Y. 1973), which was reversed on appeal, and on United States v. McDaniel, 482 F.2d 305 (8th Cir. 1973), for the proposition that once the prosecutor has read any immunized testimony, it is virtually impossible for the Government to establish that its case was not tainted. In Bianco, however, the Second Circuit emphatically rejected that argument, particularly in a situation such as here, where any contact by the prosecution with material derived from bankruptcy testimony occurred well after the indictment was filed. Dkt. No. 75-1244 (2d Cir. April 8, 1976), slip op. at 3116-17 n. 14.

at trial is untainted by the defendants' bankruptcy testimony, it should be held after the trial for several compelling reasons.

Holding a hearing before trial will require the Government to anticipate and set forth all the evidence it will present during this lengthy trial, a task that is extremely burdensome and perhaps impossible. Indeed, this is probably "one of the many cases in which only a complete record can ultimately resolve all questions relating to the source of evidence." United States v. First Western State Bank of Minot, N.D., 49 (F.2d 780, 784 (8th Cir.), cert. denied, 419 U.S. 825 (1974). Moreover, a pretrial hearing will allow the defendants a complete preview of the Government's evidence prior to trial, a heavy price the Government should not be required to pay and a windfall the defendants should not receive. Further, since at a pretrial hearing the Government would have to set forth and show an independent basis for all the evidence it may conceivably offer at trial, the hearing would be excessively lengthy. The parameters of a post-trial hearing would be limited by the evidence actually offered at trial, and could be limited even further by requiring the defendants to point to those portions of the evidence they believe could conceivably have been derived from their bankruptcy testimony. In addition, to negate effectively the possibility

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of any use having been made of the materials to which we may have had access, the prosecutors would have to review the materials, which we have avoided doing since these motions caused them to come to our attention in order to minimize any possibility of taint. If the defendants are convicted at trial, the possibility will be diminished of tainting the Government's case by a member of the prosecution team reviewing these materials to prepare for the hearing, cf. United States v. Bianco, Dkt No. 75-1244 (2d Cir. April 8, 1976), slip op. at 3117 n. 14, or an Assistant United States Attorney unconnected to this prosecution can be assigned, for purposes of the hearing, to review the materials and compare them to the evidence at trial.

In sum, the prosecution having shown that it had no contact, either directly or indirectly, with the defendants' bankruptcy testimony prior to the filing of the indictment, and that the evidence presented to the grand jury was obtained independently of that testimony the defendants' motions to dismiss the indictment should be denied and any hearing that may be required on post-indictment taint should be held after trial.* See Fed R. Crim p.12(e);

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* If the defendants renew their motions after trial, it may well be possible for the Court to decide them without a hearing and on the basis of affidavits. See, United States v. Boyd, 404 F. Supp. 413 (S.D.N.Y. 1975), aff'd, Dkt. No. 75-1393 (April 15, 1976).

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United States v. First Western State Bank of Minot, N.D., 491 F.2d 780 (8th Cir.), cert. denied, 419 U.S. 825 (1974); United States v. Nolan, 420 F.2d 552, 553-54 (5th Cir. 1969), cert. denied, 400 U.S. 819 (1970); United States v. Boyd, 75 Cr. 140 (MP) (S.D.N.Y. Sept. 25, 1975), Tr. at pp. 141-51, and 404 F.Supp. 413 (S.D.N.Y. 1975), aff'd, Dkt. No. 75-1393 (2d Cir., April 15, 1976); United States v. Birrell, 269 F.Supp. 716, 725-28 (S.D.N.Y. 1967). This course is especially appropriate here because of the inexcusable lateness in the filing of these motions. Indeed, if these motions had been filed in April 1975, as required by this Court, the issue they pose would have been clearly presented to the Government, especially as to Boucher's bankruptcy testimony, and it is probable that the Government would not have had even the limited contact with bankruptcy-related materials that may have occurred.

Conclusion

For the foregoing reasons, the Government respectfully submits that the defendants' motions should be denied.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

PAUL VIZCARRONDO, JR.,
JOHN R. WING,
Assistant United States Attorneys,
Of Counsel.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and : 75 Cr. 70 (MEF)
A. ROWLAND BOUCHER,

Defendants. :

- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMSON VON STEIN, being duly sworn, deposes and says:

1. I am an Attorney employed by the Securities and Exchange Commission ("SEC") in Washington, D.C. I have been assigned to assist John R. Wing, Chief of the Fraud Unit, United States Attorney's Office for the Southern District of New York, in the above-captioned matter.

2. This affidavit is submitted in opposition to the motions filed by each defendant to dismiss the indictment as having been obtained on the basis of evidence discovered as a result of each defendant's testimony in bankruptcy proceedings.

3. In July 1973, I was assigned to and did investigate the relationships and transactions between King Resources Co. ("KRC") of Denver, Colorado and IOS, Ltd ("IOS") and Fund of Funds, Ltd ("FOF").

4. As a result of my investigation, the SEC referred its files to the U.S. Attorney's Office for the Southern District of New York for possible criminal action. I was assigned at that time to assist the U.S. Attorney's Office and have done so since then.

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5. I shall describe in this affidavit the nature of those documents which ever were or are now in the files of the U.S. Attorney's Office for the Southern District of New York which arguably describe testimony in the various KRC or John M. King bankruptcy or reorganization hearings in Denver and how and when they came to my attention.

6. In June of 1975, I saw in the files of IOS in France an undated document titled "Continued Examination of John M. King, August 11, 1971, at 9:00 A.M., by Harry Sterling, counsel for Creditors Committee." The document appears to be a digest of testimony with one or a few lines per page. I do not recall reading it although it is likely that I did in July 1975 when the documents were sent to me. I have not read it since, I took no notes, I did not digest it, and I do not recall if it contains anything relating to the above-mentioned indictment. I do know that I did not speak to any new witness(es) or initiate any new lines of inquiry or investigation as a result of reading it. I had forgotten its existence (if I had ever made any particular note of it) until May 15, 1976 when Mr. Wing informed me he had found it in the files as a result of making a search in response to the defendants' motions. I identified its source from the source designation Xeroxed on all files I obtained from IOS files in Ferney Voltaire. The approximate date it was Xeroxed is also on the document, i.e. 6-7-75. June 1975 was the first date any SEC or U.S. Government attorney had access to IOS files in Europe.

7. In September or October 1975, while looking through the Denver IRS office's clipping file on John King,

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I saw and read approximately six Rocky Mountain News (Denver) clippings which purported to report on some statements made by John King at his personal bankruptcy hearings in 1971. I took no notes, I did not digest or classify them and I have not read them since. I do not recall seeing anything relevant to the indictment from them and I know I did not contact any new witnesses or open any new lines of inquiry as a result of reading them.

8. In October or December 1975, I read part of defendant Boucher's testimony in Dallas in the KRC reorganization proceedings while in the United States Courthouse in Denver. I do not recall learning anything about the Arctic transaction, I took no notes, I did not get a copy of the testimony, I have not read it since and I did not contact any new witnesses or open any new lines of inquiry as a result of reading the testimony. I vaguely recall it dealt with the issue of what contacts KRC had in Texas.

9. In the Summer of 1975, I recall reading some of the testimony of Boucher as questioned by Counsel for the trustee for KRC, John Pfeiffer. I do not recall anything relevant to the indictment in it. I have not read it since, I did not take notes or digest the testimony and I know that I did not contact any new witnesses or open any new lines of inquiry as a result of reading it.

_____

THOMSON VON STEIN
Attorney, Securities and Exchange Commission

Sworn to before me this

day of May, 1976.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and : 75 Cr. 70 (MEF)
A. ROWLAND BOUCHER,

Defendants. :

- - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

PAUL VIZCARRONDO, JR., being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and, with John R. Wing, Chief of the Frauds Unit, have been assigned responsibility for the above-captioned matter.

2. This affidavit is submitted in opposition to the motions filed by each defendant to dismiss the indictment as having been obtained on the basis of evidence discovered as a result of each defendant's testimony in bankruptcy proceedings.

3. The trial of this case is now set to begin on Monday, May 24, 1976, (after having been adjourned from May 17 because of the filing of these motions) well over one year after the filing of the indictment and more than one year after the time set by this Court for the filing of motions.

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The Government was served with the defendant King's motion on Tuesday, May 11, 1976 at approximately 8:00 P.M., and with the defendant Boucher's motion on Wednesday, May 12, 1976. Both motions are based upon claims and allegations that were within the knowledge of the defendants more than one year ago. Each defendant has been represented by able counsel from the beginning of these proceedings, and each filed discovery and substantive motions at the appropriate time set by the Court. That the defendants should wait until the eve of trial to make the instant motions seeking to dismiss the indictment can only be explained by gamesmanship on their part of the most outrageous and intolerable sort.

4. The defendants have set forth absolutely no reason why these motions, based upon factual allegations of which they have been cognizant since the filing of this indictment, could not have been filed at the proper time over one year ago. To require the Government to undergo the burden of refuting the defendants' allegations at this time, less than one week before trial, is unfair and unjustifiable. The defendants' motions should be denied, pursuant to Rule 12(f), as being untimely.

5. Moreover, the inquiry that the Government has been able to make since the motions were filed has established that the motions, in addition to being untimely, are baseless.

6. As to the defendant King's allegations, the United States Attorney's Office does not have a copy of any of the transcripts to which he refers (except for the seven page "digest," described in Mr. Wing's affidavit, which was obtained by this office after the filing of the indictment)

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and no person connected with this prosecution has read any of those transcripts. Carolyn MacNeil, an Assistant United States Attorney in the civil division of the United States Attorney's Office in Denver, has informed me that she did attend several of King's personal bankruptcy hearings in connection with the civil tax case brought by the Government against King. She was, however, aware of the immunity problem, as was everyone else involved in the tax case against King, and did not communicate in any way any information obtained as a result of King's testimony to any one in the criminal division of the United States Attorney's Office (which in the early 1970's was on a different floor from the civil division and today is in a different building) or to any one at the Securities and Exchange Commission. John Kelly, an attorney at the Denver Regional Office of the Securities and Exchange Commission, informed me that the SEC and the Denver United States Attorney's Office were aware of the immunity problem, and that his office specifically avoided obtaining information for their King investigations from any one who may have obtained information as a result of King's bankruptcy testimony. A memorandum so directing SEC personnel was circulated. Kelly also told me that he gave information to the Internal Revenue Service for their tax case against King, but did not receive any information from IRS because of the possibility of tainting the SEC's and United States Attorney's investigation. John Moats, of the Denver Regional Counsel's Office of the IRS, confirmed Kelly's statement. Thomson Von

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Stein, an attorney with the SEC who has been working with the prosecutors on this case, did obtain certain documents from Moats in late September or October, 1975 (well after the indictment was filed), but Moats stated that none of those documents, with the possible exception of a folder containing newspaper articles about John King, was obtained by IRS as a result of King's testimony in his personal bankruptcy proceedings.

7. The defendant King also hypothesizes "taint" in the Government's case because we obtained certain documents from the Denver law firm of Holmes, Robert and Owen, and the New York law firm of Donovan, Leisure, Newton and Irvine. Each firm represented a bank at King's personal bankruptcy proceedings and members of both firms were present at some of the hearings at which King testified in 1971. I spoke with James C. Owen, Jr., the partner of Holmes, Robert & Owen who was present on behalf of the United States Bank of Denver at part of King's testimony. Mr. Owen confirmed that his firm had represented King Resources in some matters, but their representation ended in 1970, and all documents that their firm gave the Government would have been obtained by the firm prior to that time. Similarly, the Donovan, Leisure law firm had been retained in 1970 by the Board of Directors of the Fund of Funds to investigate FOF's relationship with King Resources Company, and the law firm ended this investigation in January 1971. John McCann, the attorney at Donovan, Leisure, in charge of this investigation, confirmed to Mr. Wing that

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all documents obtained by the Government from Donovan, Leisure were obtained by that law firm before February 1971.

8. The Government is in the process of obtaining affidavits from persons referred to in King's moving papers as being present during his bankruptcy testimony. These affidavits will establish that none of those persons transmitted any information to anyone connected with the prosecution of this case. The affidavits will be submitted to the Court as soon as they are received.

9. The defendant Boucher points to two instances where he testified in the King Resources Bankruptcy proceedings as a basis for his motion. The first allegedly occurred in Dallas, Texas in 1971, before the proceedings were transferred to Denver and the present trustee was appointed. Boucher apparently does not have a copy of the transcript, and cannot state what the substance of his testimony was, nor does he know the names of any persons connected with the Government that may have been present. While Mr. Von Stein believes that he may have read part of this testimony in the Fall of 1975, this was well after the filing of this indictment.

10. Boucher also relies on testimony that he gave in August 1974 to Jack Pfeiffer, attorney for Charles A. Beer, the trustee for King Resources Company in Chapter X reorganization. Mr. Pfeiffer has informed me that court records indicate that Boucher was appointed in August 23, 1971, as an additional trustee in the KRC reorganization by Judge Sarah Hughes of the United States District Court for the Northern District of Texas. Boucher resigned as additional trustee,

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however, on October 19, 1971, when the reorganization proceedings were transferred to Denver and Baer was appointed trustee. Pfeiffer further stated that when he questioned Boucher in August 1973, it was in the course of an investigation authorized by the court pursuant to section 167 of the Bankruptcy Act, 11 U.S.C. §567, and, although Boucher was subject to subpoena like any other witness, he was not under any court order to answer Pfeiffer's questions. Pfeiffer stated that he questioned Boucher as a director and officer of the corporation under section 167(2), 11 U.S.C. §567(2), and that he was not conducting an examination of the bankrupt corporation. Pfeiffer never told Boucher that he was testifying under a grant of immunity. Pfeiffer advised Boucher of his constitutional rights before questioning him, and believes that if Boucher had claimed his Fifth Amendment privilege the questioning would have stopped. Moreover, if Boucher had refused to testify, it would not have affected the right of KRC to enter into a plan of reorganization.

11. The Government has a copy of Boucher's August 1973 testimony in its files, and it was read by Mr. Von Stein. For the reasons set forth in the accompanying memorandum of law, Boucher did not have immunity when he testified in August, 1973, and there is therefore no taint problem. Moreover, the Government did not obtain the transcript before April 1975, and clearly did not obtain the indictment on the basis of any evidence derived as a result of this testimony.

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12. The accompanying affidavits of Mr. Wing and Mr. Von Stein describe the inadvertent and limited contact they had well after the filing of the indictment with certain other materials derived from the defendants' bankruptcy testimony. I have not read or otherwise learned the contents of any testimony given by either defendant in any bankruptcy proceeding, nor do I have knowledge of any evidence derived from any such testimony. Moreover, Mr. Wing, Mr. Von Stein and myself have in the past speculated among ourselves as to what the defendants would say about the allegations in the indictment.

13. The Government is also submitting to the Court in camera another affidavit prepared by Mr. Von Stein outlining the bases, wholly independent of the defendants' bankruptcy testimony, upon which the evidence that was presented to the grand jury was obtained. The Government is not submitting the grand jury testimony or testimony taken before this SEC in this case because of its length, but is prepared to do so if the Court wishes to examine it in camera.

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14. In sum, the Government urges the Court to deny the defendants' motions because they are untimely and because the Government has shown that no immunized bankruptcy testimony of the defendants' was used, either directly or indirectly, to obtain the indictment.

PAUL VIZCARRONDO, JR.
Assistant United States Attorney

Sworn to before me this

day of May, 1976.

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AFFIDAVIT

State of Colorado)
) ss
City and County of Denver)

Carolyn J. McNeill, being of legal age and being first duly sworn, deposes and says:

1. That she is employed as Assistant United States Attorney, Civil Division, Denver, Colorado, and has been so employed since July 1969.

2. That bankruptcy matters have been assigned to her routinely during the period of her employment.

3. That she has represented the United States Attorney's Office at meetings of creditors and hearings in John McCandish King, Bankruptcy No. 71-B-1630, in King Resources Company and International Resources Limited, Nos. 71-B-2921 and 72-B-644; and that she has attended hearings held in Bankruptcy Court concerning other companies related to them.

4. That the United States Attorney for the District of Colorado, on June 14, 1971 requested the Tax Division, Department of Justice, to assign an attorney from Washington, D. C. to handle the John M. King Chapter XI Bankruptcy, and that Morris Silverstein of the Tax Division was so assigned.

5. That Charles Powers, then of the Office of Regional Counsel, Internal Revenue Service, Denver, was assigned to this matter for the Internal Revenue Service.

6. That on June 29, 1971, she sent a letter to the Regional Administrator of SEC, copy of which is attached hereto as Exhibit 1.

7. That she received a letter dated June 30, 1971, in response, a copy of which is attached hereto as Exhibit 2.

8. That on June 30, 1971 in conference with Attorneys Silverstein and Powers, she discussed the contents and applicability to the pending first meeting of creditors in John McCandish King, of Department of Justice Memorandum No. 744, a copy of which is attached as Exhibit 3.

9. That from June 30, 1971 to this date she has attended meetings of creditors, hearings and conferences with counsel for the debtor and other creditors in John McCandish King, King Resources Company and related companies with matters pending in the Bankruptcy Court, Denver.

10. At no time has she discussed matters or information which have come to her knowledge through her participation and attendance at the various meetings and conferences in the bankruptcies referred to herein, with any Attorney from the Criminal Division in the United States Attorney's Office, Denver, or Department of Justice, Washington, D.C., or with any representative of the SEC.

11. That on December 16, 1975, she attended the morning session of the first meeting of creditors in John McCandish King, 71-B-1630, before Bankruptcy Judge John Moore.

That following the morning recess she became concerned lest her further attendance at the meetings of creditors would prejudice a criminal case she knew was pending against John McCandish King

MAY 17 1976

UNITED STATES ATTORNEY

A 409

in New York. For that reason, she left the meeting of creditors and telephoned Arthur L. Biggins, who is presently handling the John M. King and King Resources Company matters for the Tax Division, Department of Justice, and asked him to ascertain whether the Criminal Division had any objection to her attending the first meeting and future creditors meetings on behalf of the Tax Division. Mr. Biggins responded by letter that day. A copy of the letter is attached as Exhibit 4.

12. That she attended a continued first meeting of creditors in John McCandish King on December 17, 1975.

13. That because she was on leave from her office, or was handling matters which precluded her attending, she has not attended any meetings or hearings in connection with John McCandish King, 71-B-1630 since December 17, 1975.

14. That on or after December 16, 1975, she has not disclosed any of Mr. King's testimony to any Government Attorney other than Mr. Biggins or John Moats, who is presently assigned to the case from Regional Counsel, Internal Revenue Service, Denver.

DATED this 14th day of May, 1976.

Carolyn J. McNeill
CAROLYN J. McNEILL

Subscribed and sworn to before me this 14th day of May, 1976.

Helen R. Ray
Notary Public

My Commission Expires May 16, 1976.

A 410

A410

71 0456
CJMcN/mtd

June 29, 1971

Mr. Donald E. Stocking
Regional Administrator
Securities and Exchange Commission
7224 Federal Building
Denver, Colorado 80202

Re: John McCandish King -
Bankruptcy No. 71-B-1630.

Dear Mr. Stocking:

As you are aware, the initial meeting of creditors relative to the above-entitled proceeding is scheduled for June 30, 1971. At this time an examination of the debtor will be undertaken and testimony will be elicited by the Referee in Bankruptcy and other creditors.

It is our understanding that your office is considering criminal security violations relative to the activities of the above-named debtor. We also understand that your office is concerned that participation in these proceedings by the Tax Division, Department of Justice, or the United States Attorney's Office may give rise to a claim of immunity under Section 7(a)(10) of the Bankruptcy Act (11 U.S.C. 25(a)(10)).

Based on the foregoing, would you please confirm in writing that you do not wish the Department of Justice or the United States Attorney's Office to question the debtor, Mr. John M. King, or to attend the initial meeting of creditors.

P.S. Please wish your response by 5 P.M. Friday June 29, 1971

Very truly yours,

JAMES L. TREECE
United States Attorney

Carolyn J. McNeill

By:
CAROLYN J. McNEILL
Assistant U. S. Attorney

Exhibit 1

A411

A 411

IN REPLYING PLEASE QUOTE
D-1407
JJK

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
7224 FEDERAL BUILDING
1961 STOUT STREET
DENVER, COLORADO 80202

June 30, 1971

James L. Treece, United States Attorney
Attn: Carolyn J. McNeill
Assistant United States Attorney
District of Colorado
323 U. S. Court House
Denver, Colorado 80201

Re: John McCandish King -
Bankruptcy No. 71-B-1630

Dear Mrs. McNeill:

Reference is made to your letter of June 29, 1971, inquiring as to if this office will object to the participation by the Tax Division, Department of Justice, or the United States Attorney's Office in the initial meeting of creditors relative to the above-entitled proceeding scheduled for 9:00 a.m. today. This office will not object to the Tax Division, Department of Justice, or the United States Attorney's Office attending such meeting or questioning the Debtor, John M. King.

Very truly yours,

Joseph F. Krys
Assistant Regional Administrator

cc:
Mr. Charles Powers
Regional Counsel
Internal Revenue Service
Federal Office Building
1961 Stout Street
Denver, Colorado 80202

cc Dj. IRS 6/30/71

Exhibit 2

-A412

A 412

DEPARTMENT OF JUSTICE

Washington, D. C. 20530

April 6, 1971

Memo No. 744

TO: ALL UNITED STATES ATTORNEYS

SUBJECT: Bankruptcy Immunity Under the Organized Crime Control Act of 1970 (Public Law 91-452, October 15, 1970)

As you know, Title II of the above Act amended clause (10) of Section 7(a) of the Bankruptcy Act (11 U.S.C. 25(a)) to provide that the automatic immunity applicable to the testimony of the bankrupt under the Section 7(a) is extended to "any evidence which is directly or indirectly derived from such testimony." This has the effect of barring the use of any leads derived from the testimony of the bankrupt in a criminal investigation or prosecution.

Under 18 U.S.C. 3057 bankruptcy referees, receivers, and trustees are required to report criminal violations to United States Attorneys. With the enactment of the new immunity provision, if successful prosecution of the bankrupt is to result from such referrals, it will be necessary that the Government be in a position to show that no evidence or leads used in the investigation or prosecution were directly or indirectly derived from his immunized testimony. Since this will require close cooperation between bankruptcy officials, the Federal Bureau of Investigation, and United States Attorneys, we have discussed referral procedures under the immunity statute with representatives of the Bankruptcy Division, Administrative Office of the United States Courts. While it is recognized by all concerned that no referral procedures can be developed that will preserve the criminal case in all instances, certain safeguards can be undertaken that, if followed, might reasonably be expected to protect against inadvertent use of the bankrupt's testimony in developing a criminal case against him.

The Bankruptcy Division of the United States Courts has agreed to recommend the following procedures to bankruptcy referees in handling criminal referrals in bankruptcy proceedings:

(1) In criminal referrals based upon evidence or leads not directly or indirectly obtained from the testimony of the bankrupt, the existing referral procedures will be followed.

cc Powers
Silverstein
6/30/71

Exhibit 3

A413

A 413

(2) In any case in which the bankrupt testifies and a criminal investigation is underway or is anticipated, the bankruptcy referee will order that no one shall have access to the transcript of the bankrupt's testimony without first identifying himself and signing an appropriate record reflecting that he has requested and been granted access to the transcript. Adoption of this procedure will assist the Government in showing in any subsequent criminal proceeding that the prosecution did not have the benefit of a review of that portion of the bankruptcy record.

(3) In addition, in any case in which the bankrupt testifies and a criminal investigation is underway or is anticipated, the bankruptcy referee will appropriately advise trustees, receivers, creditors, attorneys, and other persons who heard the bankrupt's testimony that, in the event they are interviewed concerning criminal aspects of the case, no disclosure should be made concerning the content of the immunized testimony of the bankrupt.

(4) In any instance in which the only evidence of criminality is developed in the bankrupt's testimony, the referee will refer the case to the United States Attorney for possible criminal investigation without making reference to any information based directly or indirectly upon the bankrupt's testimony. The United States Attorney will request the Federal Bureau of Investigation to conduct a limited investigation, possibly including a review of available books and records and the bankrupt's schedules, to determine whether there is independent evidence upon which a criminal investigation may be predicated. (The Criminal Division recognizes that the argument may be raised that the immunity bars a referral based solely upon the immunized testimony, but it is believed that in cases of significant import, at least, the Department has a responsibility to investigate.)

(5) When the bankrupt is a corporation, bankruptcy referees will consider the feasibility of clearly designating an individual not suspected of criminal conduct as the person to represent the bankrupt under 11 U.S.C. 25(b), thus possibly avoiding a grant of immunity to a prospective criminal defendant.

A 414

In any instances in which a bankruptcy criminal investigation is initiated on the basis of information derived from sources other than the bankruptcy referee or a bankruptcy proceeding, United States Attorneys should be alert to apprize the bankruptcy referee of the investigation in order that, if necessary, he may institute the above safeguards. United States Attorneys are reminded to advise bankruptcy referees of the disposition of criminal investigations in bankruptcy matters.

Bankruptcy referees and United States Attorneys should be alert to the fact that the immunity under the Act extends only to the bankrupt. Incriminating testimony of witnesses other than the bankrupt may properly be the subject of a routine referral under 18 U.S.C. 3057.

In developing these referral procedures, consideration was given to the question whether the immunity conferred in a Section 7(a) hearing (first meeting of creditors) is applicable to subsequent proceedings conducted pursuant to Section 21(a) of the Bankruptcy Act (11 U.S.C. 44(a)). There is case law supporting the argument that the Congress did not intend that the immunity be applicable to a 21(a) hearing. However, the Second Circuit has questioned this distinction on the basis that a 21(a) hearing is merely a continuation of the 7(a) hearing and, therefore, the immunity attaches. While the discussions on this point are dicta, the reasoning of the Second Circuit is persuasive and might well be adopted by the Supreme Court if the issue were brought before it. See United States v. Weisman, 219 F. 2d 837 (1955); United States v. Castellana, 249 F. 2d 264 (1965).

United States Attorneys are requested to keep the Fraud Section advised of significant problems and developments in the application of these immunity provisions.

Copies of this memorandum are being furnished to the Bankruptcy Division of the United States Courts and the Federal Bureau of Investigation for their information.

WILL WILSON
Assistant Attorney General
Criminal Division

A415

A 415

C

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

December 16, 1975

PC:JJMcC:ALBiggins:jlh
5-13-1839
5-13-1815

AIR MAIL

James L. Treece, Esquire
United States Attorney
323 United States Courthouse
Post Office Box 3615
1961 Stout Street
Denver, Colorado 80202

Attention: Mrs. Carolyn J. McNeill
Assistant United States Attorney

Re: In the Matter of King Resources Co.
No. 71-B-2921 (D. Colorado)

In the Matter of John McCandish King, Debtor
No. 71-B-1630 (D. Colorado)

Dear Mr. Treece:

Thank you for your telephone call this afternoon informing me that John King appeared and testified at the first meeting of his creditors this morning. You informed me that you attended this meeting. You requested me to inquire of the Criminal Division whether or not it had any objection to your attending this and future creditor meetings on behalf of the Tax Division inasmuch as a criminal case is now pending against John King in the Southern District of New York. You also specifically brought to my attention the immunity provisions of Section 7a(10) of the Bankruptcy Act and inquired whether or not your further attendance at these meetings would prejudice the criminal case.

I wish at the outset to commend and thank you sincerely for the cooperation your office has always given to us in the preparation and trial of our many tax cases.

Exhibit 4

A 416

I also wish to confirm that I previously requested you to attend these meetings on our behalf.

In accordance with your request I have informed the United States Attorney's office for the Southern District of New York, Mr. John Wing (telephone 8-662-1995) and the Fraud Section of the Criminal Division, Mr. Edward Barnes (telephone 8-739-3744) of your concern about attending these meetings. They have no objection. I accordingly confirm your authorization to attend these meetings on behalf of the Tax Division.

In order to avoid any possible contention that Section 7a(10) would taint any evidence already assembled for Mr. King's pending criminal trial, I have been requested to instruct you not to disclose any of Mr. King's testimony to any Government attorney other than myself or Mr. John Moats of the Regional Counsel's office in Denver.

Thank you for promptly informing us about this possible problem.

Sincerely yours,

SCOTT P. CRAMPTON
Assistant Attorney General
Tax Division

By: Arthur L. Biggins

ARTHUR L. BIGGINS
Special Assistant
General Litigation Section

cc: United States Attorney
New York, New York
Attn: John Wing

Edward Barnes
Fraud Section
Criminal Division

A417

A 417

AFFIDAVIT

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

I, John J. Kelly, Jr., having been first duly sworn on oath, depose and say:

1. I am an attorney assigned to the Denver Regional Office of the United States Securities and Exchange Commission and have worked in that office since January of 1962.

2. In August 1971 I was assigned as attorney in charge of the Denver Regional Office investigation entitled John M. King (D-1407).

3. In late June 1971, I was informed that John M. King was to testify in Mr. King's Chapter XI Bankruptcy proceeding on or about June 30, 1971. On June 24, 1971 I had a telephone conversation with Paul Gonson, then Assistant General Counsel in the Commission's Office of the General Counsel concerning Section 7(a) of the Bankruptcy Act and the application of the Organized Crime Control Act with respect to any immunity which Mr. King might obtain by testifying in certain bankruptcy proceedings.

4. On June 25, 1971 I prepared a letter for the signature of Joseph F. Krys, Assistant Regional Administrator of the Denver office addressed to Judge Matsch setting forth a request by the Commission to have Judge Matsch advise Mr. King of his Fifth Amendment rights. Attached to this affidavit and marked Exhibit A is a copy of such letter. On June 25, 1971, I hand delivered a copy of Exhibit A to Judge Matsch. The letter was requested by Judge Matsch pursuant to a conference in his chambers on the morning of June 25, 1971. Sheldon Friedman was present at such conference as counsel for John M. King. The matter of John M. King's Fifth Amendment right was discussed at this morning conference.

5. On or about June 30, 1971 I drafted a memorandum for the signature of Donald J. Stocking, Regional Administrator of the Denver office, addressed to all employees of the Denver office and the Salt Lake Branch Office advising the staff of Mr. King's expected

bankruptcy testimony and warning the staff to avoid obtaining any information which might have resulted from Mr. King's testimony. Attached to this affidavit and marked as Exhibit B is a copy of such memorandum.

6. Subsequent to June 30, 1971 I participated in the Commission's investigation into the securities activities of King Resources Company and Imperial-American Resources Fund, Inc. and at all times I and the other staff members who were working with me were aware of the possible immunity provisions of the Bankruptcy Act. From time to time I have had contacts with representatives of the Department of Justice and the Internal Revenue Service who were participating in the various Bankruptcy Proceedings of John M. King, King Resources Company and Imperial-American Resources Fund, Inc. At all times these other governmental agents were made aware that they were not to furnish us with any information and that this request was made because of the possible immunity provisions of the Bankruptcy Proceedings. To my knowledge such agents furnished us with no such information. However, I furnished them with various information from the Commission's files.

7. In July 1972 and in April 1973 the Commission referred a criminal reference report to the Department of Justice relating to the securities activities of King Resources Company and Imperial-American Resources Fund, Inc. Pursuant to such reference and throughout the summer and fall of 1973 I had various meetings with Assistant U. S. Attorneys assigned to the Office of the U. S. Attorney for the District of Colorado in which I advised them on several occasions of the possible immunity provisions of the Bankruptcy proceedings and of the need to avoid obtaining any information which may have resulted from any testimony taken during these Bankruptcy proceedings.

John J. Kelly, Jr.

Subscribed and sworn to before me this 27th day of July, 1976.

Notary Public

My Commission Expires:

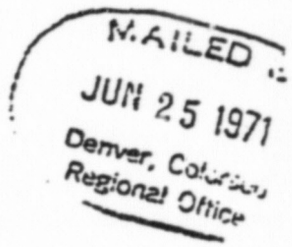
(SEAL) My Commission expires Mar. 22, 1978

A419

A 419

D-1407
JJK

June 25, 1971



Honorable Richard P. Matsch
Referee in Bankruptcy
Room 108, United States Courthouse
19th and Stout Streets
Denver, Colorado 80202

Re: Chapter XI Proceeding
John McCandish King, Debtor
71-B-1630

Dear Mr. Matsch:

The Securities and Exchange Commission has been advised that the debtor John McCandish King is to be examined under oath by you and perhaps by others, including representatives of his creditors, relating to his schedule of assets and liabilities. The Securities and Exchange Commission is interested in having the debtor John McCandish King advised of his rights prior to Mr. King giving any testimony.

It is respectfully suggested that the following warning be given by the Court to John McCandish King, Debtor:

> "Mr. King, I advise you that you will be asked questions in this proceeding by me and perhaps by others. As to each question asked of you if the answer to such question would tend to incriminate you in any way whatever, you are entitled to decline to answer by claiming your privilege under the Fifth Amendment. With respect to each question as to which you assert such privilege you are excused from answering each such question."

Very truly yours,

Joseph P. Krys
Assistant Regional Administrator

cc:
Shelden Friedman, Esquire
Isaacson, Rosenbaum, Goldberg & Miller
1700 Broadway
Denver, Colorado 80202
JJKelly/dn

Hand delivered to the Court
& mailed to Friedman JN 25-71 JK

EXHIBIT A

A420

A 420

Office Memorandum · SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE

DATE: June 30, 1971

TO : All Employees, Denver Regional Office and Salt Lake Branch Office

FROM : Donald J. Stocking, Regional Administrator

SUBJECT: John M. King (D-1407)

Today there is to commence in the court of Judge Matsch, United States Court House, 19th and Stout Streets, Denver, Colorado, an examination of John M. King as a debtor pursuant to a petition filed in proceedings for an Arrangement under Chapter XI of the Bankruptcy Act.

As you are aware, the Commission has filed two complaints for injunction against John King and others. One lawsuit, SEC, Plaintiff v. Crofters, Inc., et al., Defendants, Civil Action No. 70-351, is pending in the United States District Court for the Southern District of Ohio, Eastern Division. The other suit, SEC, Plaintiff v. King Resources Company, et al., Defendants, Civil Action No. C-2858, is pending in the United States District Court for the District of Colorado. These suits allege that Mr. King has violated various provisions of the securities laws, which laws the Commission has been authorized by Congress to enforce. Violations of these federal securities laws may lead to presentation to a grand jury for possible criminal indictment.

In order not to jeopardize any of the Commission's investigations into the securities activities of John King, each employee is instructed to make every effort not to listen to or read about reports of John King's examination in his bankruptcy proceeding. Further, each employee who is obtaining information from any person about John King should inquire as to whether or not the other party gained any knowledge from Mr. King's bankruptcy testimony. If the other party gained any such knowledge, then you are not to discuss Mr. King in any way with that party.

This procedure is being used so that information obtained by the Commission concerning John King's securities activities will be information that has been obtained from sources independent of any testimony John King may give in the bankruptcy proceeding.

If you have any questions now or in the future, please contact me or Joseph Krys.

Donald J. Stocking
Regional Administrator

cc: SLBO

JJKelly/ls/lr

Copies given to each employee at meeting 6-30-71

EXHIBIT B

SEC 676 (11-68)

A 421

A421

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT

THOMAS H. BOERSCHINGER, being first duly sworn, states the following:

1. While employed as a trial attorney with the Tax Division of the United States Department of Justice, I was assigned responsibility for the trial of those issues relating to the assessments made against John M. King by the Internal Revenue Service for federal civil tax liabilities for inter alia federal income, gift, foreign withholding and interest equalization taxes. The liability for these taxes was placed in issue as a result of John M. King filing for a Chapter XI reorganization in the federal bankruptcy court in Denver, Colorado.

2. I was not the first attorney assigned to the case and, thus, was not the attorney for the Tax Division at the time John M. King testified at the first meeting of creditors in his Chapter XI proceeding. Morris Silverstein was the attorney for the Tax Division at that time.

3. Immediately upon being assigned to the civil tax case of John M. King, I was advised by Mr. Silverstein of the immunity provisions of the Bankruptcy Act. As best I can recall, Mr. Silverstein stated that, because of the immunity provisions, a policy had been instituted that no one working on the case for the Tax Division of the Department of Justice, the Civil Division of the

A 422

United States Attorney's Office in Denver, Colorado, or the Internal Revenue Service would make any communication to any federal investigative agency, including the Criminal Division of the Department of Justice, or any United State's Attorney's Office, or the United States Securities and Exchange Commission (SEC) which would relate to said agencies any information obtained as a result of the Chapter XI proceeding of John M. King.

4. Soon after being assigned responsibility for the tax issues in the Chapter XI proceeding, I spoke with Jack Kelly, an attorney for the SEC in Denver, Colorado. Mr. Kelly, at the outset of our conversation, referred to the immunity provisions of the Bankruptcy Act and specifically requested that I not relate anything to him regarding my knowledge of the case. I complied with Mr. Kelly's wishes.

5. As best I can recall, in June of 1973, I took the deposition of John M. King in connection with the trial of the tax issues in his Chapter XI proceeding. In the spring and summer of 1974, John M. King testified at the trial on the tax issues. So far as I have knowledge, the policy outlined in paragraph 3 above was followed with regard to all of John M. King's testimony by everyone involved in the tax case.

6. In the fall of 1975, I received a call from Thomas Von Stein, an attorney for the SEC. As best I can recall, Mr. Von Stein inquired as to the status of the civil tax case and there was no discussion of the testimony of John M. King.

A423

A 423

7. The foregoing statement, to the best of my knowledge and recollection, is true.

Thomas H. Zerschlingen

SUBSCRIBED AND SWORN TO
before me this 15th day of
May, 1976.

Notary Public

A424

AFFIDAVIT

A 424
75-026y

United States of America)
Judicial District of Colorado) ss

I, William P. McGovern, state that:

I reside at 690 Estes Street, Lakewood, Colorado.

SA

I was an employee of the Internal Revenue Service Audit Division, Denver, Colorado, during the years 1968 to 1975, and was one of the agents involved with the Federal tax examination of John M. King.

I did not attend any of the Bankruptcy proceedings concerning John M. King and/or his family, except the Federal tax litigation concerning John M. King.

I was present on June 7, 1973, June 8, 1973, and June 14, 1973, for the deposition of John M. King taken in regard to his Federal tax matters. The information gained by me as a result of John M. King's testimony has not been communicated by me, orally or in writing, to any US Security Exchange Commission Attorney, any Justice Department Attorney except those attorneys in the Tax Litigation Division of the Justice Department, or any member of the Criminal Division of any US Attorney's Office.

After Bankruptcy proceedings were begun by John M. King I was informed by Jack Kelly, US Security Exchange Commission Attorney, Denver, Colorado, that I should not divulge any of John M. King's testimony to him because of possible immunity for John M. King. As a result of this advice I have not communicated any of John M. King's testimony to Mr. Kelly.

I have read the foregoing statement consisting of this page only. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily, without any threats or rewards, or promises of reward having been made to me in return for it.

William P. McGovern
(Signature of affiant)

Subscribed and sworn to before me this 14 day of May, 19 76, at Denver, Colorado

(Signature)

Special Agent
(Title)

Internal Revenue Service

(Signature of witness, if any)

A 425

A425

PV,Jr:dlf

May 19, 1976

Hon. Marvin E. Frankel
United States District Judge
United States Courthouse
Room 2002
Foley Square
New York, NY 10007

Re: United States v. John M. King and
A. Rowland Boucher, 75 Cr. 70 (MEF)

Dear Judge Frankel:

Enclosed are the affidavits we have received to date in connection with the defendants' latest motions to dismiss the indictments. The remaining affidavits will be delivered to you when we receive them.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By: _____
PAUL VIZCARRONDO, JR.
Assistant United States Attorney
(212)791-0006

Enclosures

A 426

A426

PV,Jr:dlf

Hon. Marvin E. Frankel -2-

cc: Michael Armstrong, Esq.
Barrett, Smith, Shapiro & Simon
26 Broadway
New York, NY 10004

Andrew J. Maloney, Esq.
Maloney, Viviani & Higgins
1290 Avenue of the Americas
New York, NY 10019

A427

A 427

JRW:dl

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and : 75 Cr. 70 (MEF)
A. ROWLAND BOUCHER,

:

Defendants.

:

- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN R. WING, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and I am familiar with the facts and proceedings in the above-captioned matter.

2. This affidavit is submitted in response to defendant's motions to dismiss the indictment on the ground that it is based on immunized testimony given by the defendants in various bankruptcy proceedings.

3. To the best of my knowledge, information and belief, I have not read and have no knowledge of any of the testimony referred to in defendant's motion papers. Both defendants have testified and given statements on various occasionsin connection with other SEC investigations and civil litigation. In responding to defendants' Rule 16 motions for "statements" last summer I furnished defense

JMW:dlf

counsel with copies of all transcripts of testimony by either defendant which I knowingly had in my possession. The cover letters, which are attached hereto, reflect that none of the transcripts furnished at that time included any testimony given in the bankruptcy proceedings referred to in defendants' instant motions.

4. In reviewing our files in connection with defendants' recent motion, we have uncovered copies of (a) Boucher's deposition on August 6, 7, 1973 in connection with the King Resources bankruptcy proceeding, (b) Boucher's deposition (pages 1-4, 98-102) of September 13, 1971 in connection with the King Resources bankruptcy proceeding, and (c) what appears to be an outline or index of John King's examination on August 11, 1971 by counsel for the Creditor's Committee; (d) press clippings relating to King's bankruptcy (copies of items (b) and (c) and (d) are attached herewith)*. As best we can determine, these items were obtained after the filing of the indictment by Tom Von Stein, the SEC attorney who has been investigating this case.

5. To the best of my knowledge, recollection and belief, I have not read any of the Boucher testimony or the King testimony described above, although I cannot be 100% positive without reading the materials. I have specifically avoided doing that in order to prevent any possible taint prior to [illegible]. I am positive I have never looked at the press [illegible]pings. The basis for my conclusion that I am not famil[illegible]ar with these particular materials is as follows.

* Item A which contains approximately 150 pages can be Xeroxed and made available upon the Court's request.

A 429

JRW:dlf

6. The documents relating to this case are stored in more than ten file cabinets. The file drawer in which I have personally collected materials relating to Rowland Boucher, including transcripts of his testimony at various SEC proceedings and other materials which may be relevent to his cross-examination, did not contain the aforementioned Boucher depositions. Those depositions were located in a different file drawer, which we have used primarily to hold transcripts of testimony by various individuals which are considered basically irrelevent to our case. The short outline of King's testimony in August 1971 was found in a subfile marked King Personal, which I have used to collect information relevant to cross-examination and various allegations put forth in King's motion papers. Logically therefore, there is a greater chance that I may have read this particular document although I have no recollection of it.

7. In preparing this case for trial, I have been very conscious of the fact that I had no idea what these defendants were going to say in response to the particular charges in this indictment and I have discussed this particular problem with my colleague, Assistant United States Attorney Paul Vizcarrondo, at some length. Because of this basic ignorance I have made various efforts to ascertain from defense counsel what positions their clients will take at this trial and I believe counsel for both defendants can confirm my efforts in that regard. I am sure that if I had read any testimony of Boucher's or King's relating to the issues in this case, I would not have felt myself so ignorant as to what they might testify about these matters. Accordingly, I can only conclude

JEV:dlf

that I did not have any information either directly or indirectly from any of the defendants' so called bankruptcy testimony that bears on any issues relating to the above-captioned indictment.

8. The affidavit of King's counsel describing the general subject matter of King's bankruptcy testimony contains many references to matters totally unrelated to the instant case. However, I can categorically state I have no knowledge of anything King may have said with respect to those matters described which are relevant to this case, such as Lakeshore and the Arctic sales.

9. With respect to the King testimony, I can further state that I was acutely aware of his personal bankruptcy proceeding and the resulting immunity problem. The extent of my caution in this regard is best evidenced by the fact that I started to read some of King's testimony in a civil tax trial and put it down after only a few pages because the tax case was somehow incorporated into his bankruptcy proceeding. (Mr. Von Stein obtained this testimony sometime after August 1975) Even though I subsequently came to the conclusion that this testimony was voluntarily given and would not have been immunized under the bankruptcy statute, I decided to refrain from looking at it simply to avoid the kind of claim which defendants now raise.

A 431

JRW:dlf

10. All of the materials which have been discovered in our files were obtained well after the investigation of the defendants was substantially concluded and the indictment was filed. To the best of my knowledge and belief we have made absolutely no use of any of these four items which were obtained after the indictment.

WHEREFORE, it is respectfully requested that defendants motions be denied in all respects.

JOHN R. WING
Assistant United States Attorney

Sworn to before me this

day of May, 1970.

NOTARY PUBLIC

A 432

A 432

Michael Armstrong, Esq.
Dewatt, Smith, Shapiro & Sirna
26 Broadway
New York, New York 10004

Re: United States v. King and Boucher
75 Cr. 70

Dear Mr. Armstrong:

Pursuant to your Rule 16(a) motion for discovery of your client's statements, enclosed please find a copy of the following items: Letter from John King to John Wing of January 14, 1975; Letter from John King to Mr. VonStein of April 3, 1974; One page handwritten notes referring to telephone calls from John King; King Denver Grand Jury testimony of May 13, 1974; King SEC testimony of June 11, 1974; King SEC testimony of September 16, September 21, 1970; King SEC testimony of October 20, 1970; King deposition in SEC v. Crofters of March 16, 1971; King SEC testimony of October 27 and November 18, 1970.

The remaining documents which you are entitled to inspect and copy in connection with the above-captioned case are now available for that purpose at this office. Whenever you wish to inspect this material please notify the undersigned and we will arrange to provide you with work space. In order to comply with Judge Frankel's request that these documents be available for your inspection by July 18, 1975 we have had to forego any substantial effort to segregate out only those documents which will be introduced as government exhibits at the trial. Accordingly your discovery

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Lowell Armstrong, Esq. -2-

will include numerous documents which the government may not offer into evidence. We will be happy to copy any of these documents at your request and at your expense after you have had an opportunity to review the material.

In view of the extensive discovery which you have been granted by the Court and the early date at which you have access to these documents we ask that wherever possible you agree to stipulate to the admissibility of these documents in order to avoid unduly prolonging the trial. Please advise the undersigned on or before September 1, 1975, if you are agreeable to such a stipulation in whole or in part.

Finally, it should be noted that we may obtain additional documents relevant to this case between now and September 16. If such material is discoverable under the Court's order, we will advise you of the new additions and make them available within one week of our receipt.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
JOHN R. WING
Assistant United States Attorney
(212)791-1995

Enclosures

A434

A 434

July 17, 1975

Peter E. Fleming, Jr., Esq.
Curtis, Mallet-Prevost, Colt & Mosle
100 Wall Street
New York, New York 10005

Re: United States v. Ring & Boucher
75 Cr. 70

Dear Mr. Fleming:

Pursuant to your Rule 16(a) motion for discovery of your client's statements, enclosed please find a copy of the following items: Boucher's Denver Grand Jury testimony of February 13, 1974; Boucher's Denver Grand Jury testimony of January 7, 1974; Boucher undated handwritten letter of one page to Mr. Weinstein; Boucher's SEC testimony of August 19, 1970, July 26, 1972 and June 13, 1974. Boucher's testimony before the New York Grand Jury at which time he invoked his Fifth Amendment Privilege and answered no substantive questions is presently being transcribed and will be forwarded to you as soon as we receive it from the Grand Jury Reporters. Boucher's SEC testimony of October 5, October 6, October 8, October 19, and October 30, 1970 is presently being copied and will be forwarded to you within one week. It may well be that Mr. Boucher already has copies of most if not all of this SEC testimony.

The remaining documents which you are entitled to inspect and copy in connection with the above-captioned case are now available for that purpose at this office. Whenever

BEST COPY AVAILABLE

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you wish to inspect this material please notify the undersigned and we will arrange to provide you with work space. In order to comply with Judge Frankel's request that these documents be available for your inspection by July 18, 1975 we have had to forego any substantial effort to segregate out only those documents which will be introduced as government exhibits at the trial. Accordingly your discovery will include numerous documents which the government may not offer into evidence. We will be happy to copy any of these documents at your request and at your expense after you have had an opportunity to review the material.

In view of the extensive discovery which you have been granted by the Court and the early date at which you have access to these documents we ask that wherever possible you agree to stipulate to the admissibility of these documents in order to avoid unduly prolonging the trial. Please advise the undersigned on or before September 1, 1975, if you are agreeable to such a stipulation in whole or in part.

Finally, it should be noted that we may obtain additional documents relevant to this case between now and September 15. If such material is discoverable under the Court's order, we will advise you of the new additions and make them available within one week of our receipt.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
JOHN R. WING
Assistant United States Attorney
(212)791-1995

Enclosures

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Forced to borrow from trust funds, King testifies

STORY ON PAGE 107

Business and financial news

King links run on stock, children's trust funds use

By MORTON L. MARGOLIN
Rocky Mountain News Business Ed.

John M. King, Denver financier, told federal bankruptcy court Friday that the pressing demands for collateral and a run on his company's stock in retaliation for his attempt to take over Investors Overseas Services (IOS) forced him to go to his children's trust funds for financial help.

He told the court he bought Colorado Corporation stock from the trusts, but couldn't pay for it. So he paid what he could and gave the trusts promissory notes which total nearly $4.5 million.

He also sold his four homes, at 28 Sunset Drive, Cherry Hills; in Palm Springs; in Vail Village, and on the island of Maui in Hawaii, along with some oil and gas properties and some Ban real estate to the trusts.

Margolis

In return King got a $3,191,000 lifetime annuity, guaranteed by the trusts which are obligated to pay him $157,000 a year for life, and to pay his wife the same amount each year she lives beyond his life span.

The first annual annuity payment, due last June 1, has not been paid, he indicated, because attorneys for the trust are trying to determine if he should get the money in view of his tangled financial affairs, or if it will have to be paid to someone else.

In the meantime, as King outlined the situation from the witness stand, his four children's trusts own the real estate in which he lives and are also among his largest single creditors.

King was testifying in connection with a Chapter 11 procedure of the bankruptcy law in which the debtor, with the help of the court, attempts to work out a plan for repayment and thus avoid bankruptcy.

If he is able to do that, then presumably his children's trust funds would be paid off along with the other creditors.

But that will depend on a plan still to be submitted by King. The submission, the bankruptcy court was told, will have to wait trial of Internal Revenue Service claims against King. Those claims, for more than $5 million, are contested. Since IRS usually has first call—ahead of other creditors—that matter will have to be adjudicated before an intelligent repayment plan can be drawn up.

As the hearing started Friday, Harry Sterling, chief attorney for the creditors committee, announced the bank creditors who hold more than $7 million worth of unsecured notes had [illegible] Chairman of the Central Bank of Cleveland, as chairman, and Robert W. Christian of the First National Bank of Denver, as trustee of the committee.

King then took the stand to describe the functioning of his children's trusts and his transactions with them. He offered a preliminary statement, however, protesting the report in Friday's Rocky Mountain News which said he "detailed a sellout by business associates commitment to losses by overenthusiastic employes . . ."

"I am not unconscious of the propensity of hearings such as these to cause publicity," he said. "Nor do I know how my words will come out when heard by others . . . but I unequivocally restate that the Southern California First National Bank is not a business associate and I do not blame employes who acted in my behalf. I take full responsibility."

After the hearing, the attorney for the Southern California First National Bank, commented privately:

"We don't consider him a business associate either."

King said the No. 1 trusts for his four children were set up originally on June 30, 1967, with Colorado Corporation stock as their principal assets.

At the end of 1969, he recalled, King Resources stock was worth about $30 a share. In early 1970, King said, he was trying to take over IOS at a time when the market decline had driven King Resources stock down to $22 to $25 a share.

King said he had large bank borrowings and an unwritten agreement with the banks that he would keep enough stock on hand as collateral to double the dollar value of the loans.

When the market decline dropped King Resources to the $18 to $19 level, he said, the banks began asking for more collateral.

"When I tried to take over IOS," he said, "the European banks and Wall Street were reluctant to see a guy from Denver take over such a large financial entity. Large amounts of King Resources were held by Europeans, who began to sell it. I can't say there was a conspiracy, but those sales gave us a heartburn," King said. "In about two weeks it dropped to the $15 to $10 a share level."

He said a plan to merge King Resources with Colorado Corporation was set up in May 1970, and on the basis of the exchange, Colorado Corporation stock would have attained a market value of about $22 to $25 a share.

It was a hard stock to value prior to the merger because it was privately held and there was no trading. Some banks agreed to take the Colorado Corporation stock as collateral.

So King decided to buy [illegible] shares of Colorado Corporation from the trusts at $5 a share. That made the bill $4,[illegible]. He had no cash so he gave the No. 1 trust two notes.

Another series of trusts, called the No. 2 trusts, he said, were created on Jan. 1, 1968. He said these trusts [illegible] million shares of Colorado Corporation which in turn accepted [illegible]

[illegible] he said he started [illegible] on the [illegible] on a life over $450,000 [illegible] rate for the remaining [illegible].

"That note is now in default," he told [illegible].

[illegible]

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REASONS FOR TROUBLES GIVEN

King Cites Associates' Overenthusiasm

By JANE LARUE
Denver Post Staff Writer

[illegible] Denver Thursday in the [illegible] bankruptcy referee [illegible] financial downfall [illegible] by the over [illegible] of associates and [illegible] of investors [illegible]

[illegible] told Richard Matsch, [illegible] he real [illegible] Denver. Here [illegible] "muzzled" [illegible] by IOS [illegible] the second he began [illegible] to an attempt [illegible]

[illegible] having every word I spoke to trusted associates appear the next day in the newspaper."

King said IOS demonstrated a hostility toward all his enterprises, refusing to pay King Resources money it owed for interests in King Resources development projects, and tried to disrupt King's credit and made economic threats to King Resources.

IOS TRUST

King testified earlier that he had established a trust in the Bahamas to receive IOS stock he had acquired. That trust was concerned solely with holding the IOS stock, he said, and was the only one of the King trusts which he established himself.

Two other Bahama trusts were established by a friend and hunting companion, Moritz Von Hessan, for King's wife and children, King said. IOS stock later came into the possession of these trusts, he said. He had mentioned to Von Hessan while they were on a hunting trip that a block of IOS was available and would do well for the trusts. "Much to my surprise," King said, Von Hessan bought $150,000 to $200,000 worth of IOS for the trusts, borrowing the money to pay for it.

Later, Von Hessan, suggested that King might help pay for the stock and King sent 10,000 shares in King Resources to the Mercantile Bank and Trust Co. which controls the trust, King said. He had no documents to show for the transaction, he said.

PROBE FURTHER

Matsch plans to go further into the question of the King trusts at Friday's hearing.

King also told the court Thursday that employes of King Resources and the Colorado Corp., through tips on Hessan, frequently plunged into projects they had heard King mention and he wound up with the bill.

When things began to go badly in his financial affairs last year, he said, a number of holdings were disposed of without his knowledge and applied against debts he owed.

Such a case involved the sale of 33,000 shares of Franklin Life Insurance Co. stock which was sold by the Southern California First National Bank of San Diego who applied the proceeds of more than $150,000 to a note owed to the bank.

ERRONEOUS IMPRESSION

The bank first sold $382,565 worth of the stock when they got an "erroneous impression from an employe of the Colorado Corp. that I wanted the stock sold," King said. Later, King decided to dispose of the remaining 5,900 shares of Franklin Life and asked an employe to handle the sale.

The employe put the stock in the hands of the San Diego bank who sold it for another $73 600 and applied the money to King's debt.

"I thought I was dealing with friends," King said in explaining his runaway finances. He said he took no action over the Franklin Life sales because he was too beleaguered with other financial affairs.

Matsch Thursday morning extended his order staying the Internal Revenue Service (IRS) from enforcing tax liens against King properties and established a court protected bank account through which King may resume business activities. Lawyers were still trying to work out a method of accounting for King's activities through the account after court recessed Thursday at 5 p.m. Matsch gave them until 9 a.m. Friday to resolve the question of whether King can continue all activities in that one account.

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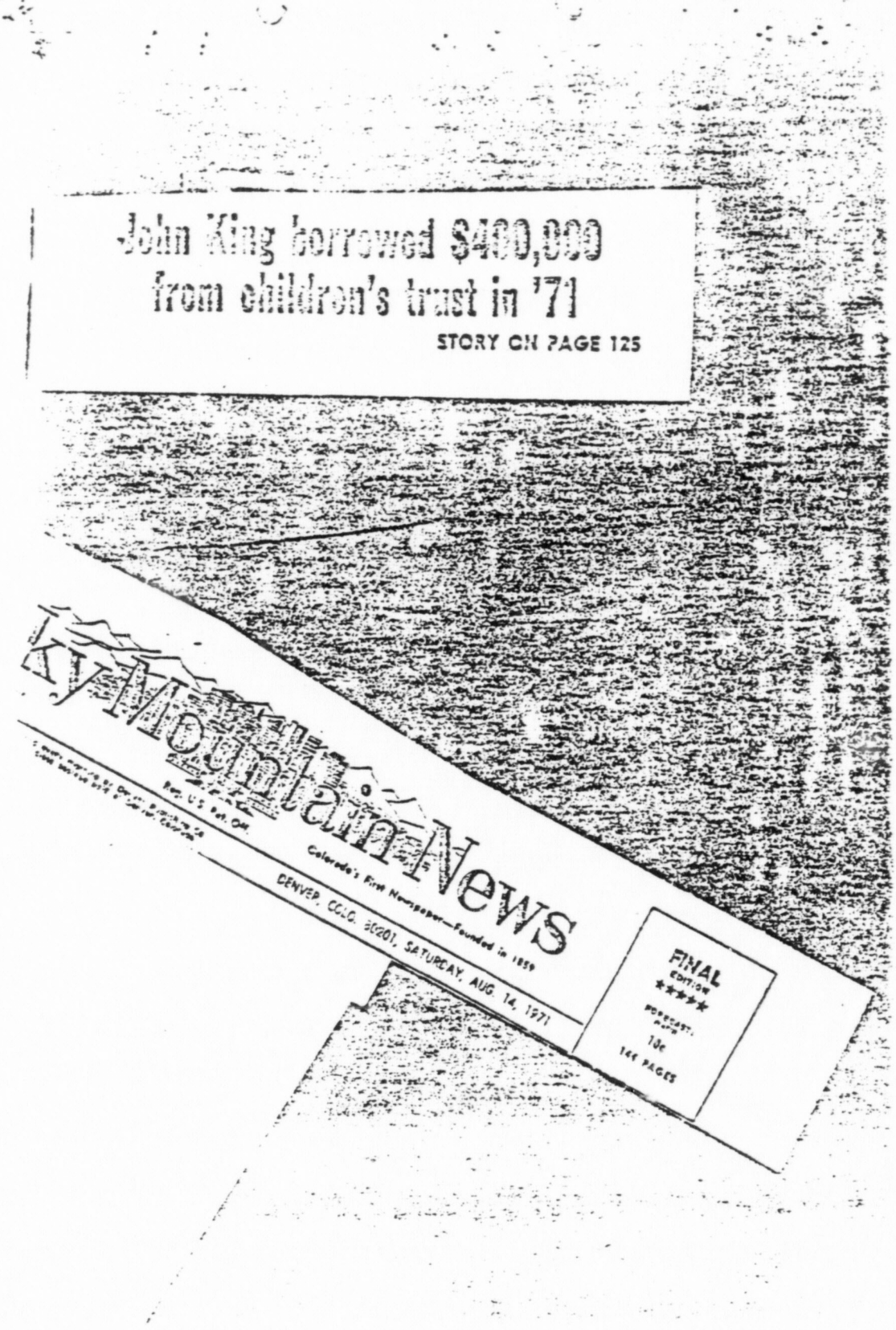
John King borrowed $400,000
from children's trust in '71
STORY ON PAGE 125
Rocky Mountain News
Colorado's First Newspaper—Founded in 1859
DENVER, COLO. 80201, SATURDAY, AUG. 14, 1971
FINAL
EDITION
10¢
144 PAGES

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Kings borrow $400,000 of children's trust funds

By NORTON L. MARGOLIN
Rocky Mountain News Business Editor

When the river of money dried to a trickle this year for John M. King, the Denver oil man and financier found a new source from which to borrow $400,000—his children's trust funds.

The details were disclosed by [illegible] John M. (Carolyn) King Friday from the witness stand in federal bankruptcy court, where she faced her creditors in a Chapter 11 proceeding under which the Kings are attempting to avoid bankruptcy by reorganizing their affairs under the protection of the court.

Margolis

She appeared in two roles—as a debtor, and as a trustee for the children's trusts.

She told the court that in January 1971 the children's trust loaned $200,000 to help the Kings pay [illegible] costs of making their home at 20 Sans Souci in Cherry Hills livable.

"We had started a big expansion program on the house, and we were faced with a hole in the ground, no heat in part of the structure, and many things unfinished which were required to make it livable," she testified.

Grand County properties

"So my husband and I took the loan, and we both put up collateral to cover it. He gave the trusts some notes due him on some Grand County properties and I put in all the bonds I owned. I felt I ought to participate since I lived there, too, and I didn't think he ought to have to carry the whole load."

In March 1971, Mrs. King testified, a second loan for $200,000 was made to her husband, alone. "to help keep him afloat."

At that time she remained as the sole trustee with the power to make decisions, since all of her cotrustees had resigned for one reason or another. She testified she attempted to get new trustees to serve, but it now has not been successful.

Mrs. King is involved in the proceeding in bankruptcy court because she appears as guarantor of a number of notes signed by her husband in connection with bank loans he made.

Her attorney told the court Friday she will contest one of the notes on the basis the signature is not genuine, and will contest the others on the basis of what the claims against her are.

Questioned at length about her activities as a trustee of the children's trust funds, Mrs. King said she served at various times with Timothy Lowry, Chicago attorney and former general counsel for King Resources, and with various other associates of her husband, including Rowland Bourner, King's successor as head of King Resources, and Edward Cohen, former president of Investors Overseas Services.

"I was a trustee so that if my husband died before I did, I would know something of the business affairs and would be able to tell the children why certain transactions were made," she said.

For the most part, however, she testified, she relied on Lowry to tell her what to do.

'Uncle Tim' to children

"He was a longtime friend, my husband's counsel, and my children called him 'Uncle Tim,'" she said.

One of the major transactions involving the children's trusts dealt with the transfer of the King homes in Cherry Hills, at Vail, at Palm Springs and on Maui in Hawaii to the Children's Trusts No. 1 in exchange for a lifetime annuity for King of $187,000 a year. The annuity was to continue after his death — paid to Mrs. King for her lifetime.

Questioned by the court as to where the money for the annuity would come from, Mrs. King disclosed she and her husband signed a lease under which they promised to pay $55,000 a year rental on the homes.

Questioned about the balance of the annuity, Mrs. King said she had no idea where the money would come from.

"Mr. Lowry said it was important to set it up this way, so we did. I depended on his expertise. Actually I didn't know there was a problem about money."

Testimony showed the Kings did not pay the $55,000 rental due from June 1, 1970, to June 1, 1971, nor did the trust pay the annuity also due June 1, 1971.

Colorado Corp. stock

She testified the rental was not paid because the Denver house was not livable, and the cost to the Kings for making it habitable was to be charged off against the rental liability.

King, testimony showed, was not given the annuity because he owed the trusts for the loans he made from them in January and March.

Mrs. King said Lowry felt it was important that the children's trusts have what he termed "solid assets." Up to the time of the real estate transfer, their assets consisted solely of Colorado Corporation stock.

The stock in Colorado Corporation was sold to King at $5 a share. He gave the trusts his personal notes for the shares.

"Did you intend to rent the houses," Richard Matsch, bankruptcy referee, asked Mrs. King.

"No, we didn't contemplate we'd rent them out," she said. "The home here was unfinished and we are living in it. We consider the one at Vail our mountain retreat. We have nowhere to go in the mountains since we left the ranch.

"We'd consider an offer for the Palm Springs house if it was high enough," she said. "But we are not going to put it on the open market for curiosity seekers to tramp through.

"Our life style has changed, and we no longer have transportation in Palm Springs [illegible]

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Beneficiary of fund

Mrs. King also told the court her late father made her beneficiary of a trust fund along with her two sisters and a brother. He also created a second trust for the 13 grandchildren.

She testified each beneficiary — she, her two sisters and brother — was to get $5,000 a year income from the trust. But prior to the King's financial difficulties her share and her brother's share were cut to $50 a month since they didn't need the money and their surviving mother did.

James Owen, representing the United Bank of Denver, objected he wanted to see the trust documents to satisfy himself the provisions of the will could be altered in that way. Jaffeth said he didn't know if he could order such disclosure to not because of the other parties in the trust who were not involved in the contruption.

Said Owen, "I don't care if I see them in confidence ... as part of the court record, or if I get them from the files of the Rocky Mountain News, but I want to see them."

The open court hearing was recessed until Oct. 5.

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[illegible] BUSINESS

Boucher Named Trustee In King Resources Case

A. Rowland Boucher, chairman of King Resources Co., has been appointed "an additional trustee" in the Chapter 10 bankruptcy proceeding against King Resources by a Dallas, Tex., federal court.

Boucher's appointment was confirmed in Denver Tuesday by Lloyd Ward, an attorney with King Resources.

His appointment was approved in an order filed the same day as the order appointing Kiel Boone, a Dallas oil lawyer and trustee in the case.

The bankruptcy proceeding was filed in the Dallas federal district court Aug. 14 by minor creditors. They asked for reorganization and continued operation of the company under the Chapter 10 provisions of the Bankruptcy Act.

In the order appointing the trustee, U.S. Dist. Judge Sarah Hughes ordered a stay of all other court proceedings against King Resources. Thirteen other suits have been filed against the company by other creditors and the Securities and Exchange Commission in district courts around the country.

The stay order was issued 17 days before a special counsel appointed in the SEC suit against the company said he had found evidence tending to establish that there was "misfeasance and malfeasance" in certain stock transactions of King Resources.

Judge Hughes' order specifically enjoined Sun Oil Co. from taking any action to terminate a Sept. 20, 1970, agreement with King Resources on the exploration of some Arctic Islands oil properties.

A change-of-venue motion has been filed by United Bank of Denver and First National City Bank of New York, indentured trustees of King Resources. The banks have asked that the case be transferred to Denver federal district court.

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THE DENVER POST Wed. Sept. 15, 1971 107

King Target Of Warrants For '70 Tax

LITTLETON — The Colorado Department of Revenue Wednesday filed copies of warrants of distraint in District Court here which were issued to John M. King and his family seeking delinquent 1970 income taxes.

The warrants were issued against King and wife, Carylin, and their children, Mark and Sally, all of 26 Sunset Drive, Cherry Hills.

The warrents asked for $1,073 in delinquent income tax, a penalty of $111.59, plus interest of $32.19, for a total of $1,216.78.

A warrants of distraint is one calling for seizure of real or personal property.

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$7.2 MILLION

King Faces Creditors

Denver oilman John M. King faced his creditors in U.S. bankruptcy court in Denver Wednesday and declared that his only income is about $6,000 a month in consulting fees through the Colorado Corp.

Nine creditors claimed more than $7.8 million in unsecured debts owed them by King.

The principal creditor is Central National Bank of Cleveland, Ohio, which claims $2,475,128. The Overseas Development Bank of Geneva, Switzerland, claims $2,020,589 and Continental National Bank and Trust Co. of Chicago, Ill., has a claim of $1,497,250.

An informal creditors committee was confirmed by Chief Bankruptcy Referee Richard Matsch of Denver U.S. District Court as a permanent creditors committee, at the first meeting of creditors in the personal bankruptcy filed by King and his wife, Carylyn, June 1.

Committee Members

The committee members are John S. McCarter, vice president and chairman of the Cleveland bank, Robert W. Cowan Jr., vice president of the First National Bank of Denver, Hardin Holmes, a Denver attorney representing the Ger[illegible] bank, and Gerald K. Bergman, vice president of the Chicago bank.

Matsch began a direct questioning of his own of King on the schedule of assets King had filed earlier. It was during Matsch's inquiry that King revealed his current monthly income of $5,580 from the Colorado Corp.

He said his current expenditures are $10,600 a month and that he is therefore incurring additional debts at the rate of $5,000 to $14,000 a month.

King told Matsch he is borrowing from "friends" to pay his monthly expenses.

The referee's questioning also explored the status of several residences occupied by King.

Pre-paid Rent

King said a San Diego home which he had leased for four months from June until October of this year at a pre-paid rent of $10,000 was paid for by "borrowing from one of the children's trusts."

The primary King residence at 26 Sunset Drive, Englewood, is partially uninhabitable, King said, because an extensive remodeling program was stopped "when the financial crunch hit."

King said the house had been acquired in 1950 for "about $130,000" and that about $2.5 million in improvements had been made to it since. He said its current appraised value, taking into account the unfinished state of the remodeling, is $[illegible],000.

King also said he has three other properties in Vail, Colo., appraised at $130,000, in Palm Springs, Calif., appraised at $[illegible],000, and at Maui, Hawaii, appraised at $[illegible],000. He said none of the properties is earning any income.

The meeting of creditors before Matsch will continue through Friday. Thursday morning's hearing will examine the claims of the Internal Revenue Service (IRS) against King and whether a temporary order by Matsch restraining IRS liens should be made permanent.

King has claimed that the IRS tie-up of his assets and operations prevent him from working and thereby paying his creditors.

IRS has more than $5 million in tax liens against King.

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Federal Tax Liens

The following federal tax liens of $500 or more were filed in the office of the clerk and recorder in Denver and surrounding counties. The name and address of the person or business against whom the lien is filed appears first, followed by the type and amount of lien. WT means withholding tax, UT unemployment tax.

DENVER COUNTY

John M. King, 26 Sunset dr., Englewood—Penalty sec. 6048, Int. 1969, 1970, $1,920,495.40.

John M. King, 26 Sunset dr., Englewood—Tax on transfers to avoid income tax, gift tax & WT 1968, 1969, 1970, $2,937,568.59.

John M., Carylyn S. King, 26 Sunset dr., Englewood—Income 1963, 1964, 1965, 1967, $497,930.20.

Gloria W. Arnold, 30 E. 20th ave.—Income 1967, 1968, $626.38.

Gary L. Cooper, 9054 E. Mansfield—WT 1967, 1968, $1,061.33.

Dutch Electric Motors Inc., 150 Yuma st.—WT 1970, 1971, $8,067.91.

Robert A. Gehret dba Mountain States Janitorial Service, 1575 S. Wolff st.—WT 1970, $629.76.

Robert A., Caroline Genret, 1575 S. Wolff st.—Income 1970, $1,028.77.

Siegfried J. Kaufman, 725 S. Columbine—Excise, 1969, 1970, $1,088.25.

Frederick Lofton, 3216 Josephine st.—Income 1967, 1968, 1969, $1,778.38.

Patrick E. Parks, 730 17th st.—WT 1970, $1,778.38.

John M. King, 26 Sunset dr.—Tax on transfers to avoid income tax, gift tax, withholding, Penalty sec. 6048, 1968, 1969, 1970, $2,937,568.59.

Harberson Concrete Inc., 2000 W. Hampden—Excise, 1969, 1970, $11,477.47.

Fibersheen Mfg. Corp., 1401 W. Stanford ave.—WT 1970, $5,651.77.

Lloyd L., Judith A. Tyson, 5713 S. Lowell blvd.—Income 1969, $1,706.21.

Joe Garrett dba Joe Garrett & Son, 187 Del Mar cir.—WT 1970, $2,121.71.

James B. Moorman Construction Co. Inc., 1174 S. Cherokee st.—WT 1970, $22,274.45.

Griggs & Linda D. Dayton, 3067 S. Santa Fe—Income 1968, $581.70.

John M., Carylyn B. King, 26 Sunset dr.—Income 1963, 1964, 1965, 1966, 1967 $497,930.20.

John M. King, 26 Sunset dr.—Penalty Sec. 6048, Interest Equalization, 1969, 1970, $1,920,495.40.

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... April 1971 ...

... Rocky Mountain News

King discusses 'downs' with TV audience

John M. King told a television interviewer Thursday that he's been overwhelmed with the kindness and support shown him by his associates, his family and the general public in the period since his multi-million dollar financial empire began to run into difficulties.

And King insisted that many facets of that empire—notably the King Resources Co. and the Colorado Corp.—have far too many existing assets and "highly creative projects" under way to be considered down and out.

While stressing that he believed King Resources probably should adopt a new name and create "a new image," King predicted that both of these companies "will be with us for a long time."

Two sides

King's comments were made in a lengthy interview, filmed Wednesday by Bob Palmer of KLZ-TV. Portions of the film were televised Wednesday and Thursday.

The oilman was asked how his four children—two sons and two daughters—had reacted to such misfortunes as that which came when he and his wife filed proceedings in bankruptcy court this week. King is asking the court to help him set up procedures for paying his creditors.

"Well, of course, that's the thing that worries one quite humanly, the most—and is bound to be the greatest—trauma," King acknowledged, but added that his family had regarded every phase of his career as an important learning experience—the downs as well as the ups.

"Now they've learned that there're two sides to that bit, and if you can't take the downs, that you don't deserve the ups," he said.

'Clearly no'

King also said he and his wife had given "a major portion of the assets" of his far-flung ventures to his children as well as to the King Resources Co. Foundation, a nonprofit arm of his empire.

"We, of course, never thought about transferring any of the debt to them, so now we are left with the debt and they've got the big bulk of the assets," he said. He then quipped that he and his wife hoped their children would take care of them "in our time of need."

When his TV interviewer asked if King Resources Co. and the Colorado Corp. were likely to fail, King said, "The answer to that is clearly no."

As for the news media, King concluded:

"In spite of what some people might think who've read a few press stories, I personally believe that the press has been inordinately fair to both me personally and to the corporations in trying to report on what was actually happening."

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King statements filed with court

By CLEM WORK

Rocky Mountain News Federal Reporter

Statements of affairs and detailed accountings of debts and assets of John M. King and his wife, Carolyn, were filed Friday with chief bankruptcy referee Richard Matsch in Denver U.S. District Court.

The weighty documents — 180 pages for King and 36 for his wife — were filed pursuant to a petition filed by the Kings' attorneys that will allow the financially troubled Denver oilman and his wife to pay off their debts, according to a repayment plan to be worked out at meetings with creditors.

The first meeting with creditors is scheduled to begin June 30 and continue at least three days, Matsch said.

King's arrangement petition, filed June 1, listed assets of $42 million and liabilities of $54 million. But the summary of debts and assets filed Friday shows much smaller balance. King's assets are $42,678,712.54. His debts are $42,009,992.56.

Mrs. King listed assets of $101,774.36 and debts of $3,162,961. Both in her and in her husband's cases, however, major portions of the debts are disputed by them.

Stated worth

Negotiable and non-negotiable instruments and securities comprise almost all of King's stated worth — $41,567,254.06. Debts due on open accounts total $912,947.61; other personal property, $146,156; automobiles and other vehicles, $29,202; real estate, $10,000; bank deposits, $5,936.77; household goods, $5,000; cash on hand, $1,315, and a horse worth $1,000.

King's debts are broken down into secured claims, $28,541,896.51; unsecured claims, $6,621,294.51; taxes owed the U.S., $5,258,680.93; accommodation paper, $1.5 million, and wages owed, $8,140.61.

Mrs. King's statement says she has $67,690 in negotiable and non-negotiable instruments and securities; $50,579 in household goods; $7,550 in insurance policies; $650 in other personal property, and $295.45 in bank deposits.

Accommodation paper — papers executed by the King guaranteeing certain debts of her husband — total $1,058,711. Another $300,000 guaranty, which the United Bank of Denver says Mrs. King is also responsible for, is disputed by her.

Taxes due the U.S. are listed as $497,880.20; secured claims, $200,000, and unsecured claims, $6,288.85.

Income tax returns for 1969 and 1968 show a negative adjusted gross income in both years, incurred by claimed business and partnership losses.

For 1969, King listed his total wages as $270,000. This was broken down to $170,000 from King Resources Co., of which he was chairman of the board until August 1970; $50,000 from Imperial American Management Co., and $50,000 from Royal Resources Exploration.

Dividend total

Dividends totaled another $113,795 and interest brought in $199,652.

These amounts were more than balanced by $5,792,238 in business losses and $1,450,150 in unprofitable partnerships.

Some $15,165 in miscellaneous income and $6,120,855 in gains on sale or exchange of property didn't make up for the losses and King claimed he ended the year with a $181,852 deficit.

The year before, he apparently fared even worse — $227,383 in the red.

Property held in trust by King includes $34,870.56 in King Resources stock for his four children, miscellaneous personal property also in their name worth $70,000 and $49,000 in airplane parts, as security for performance of contract commitments by King Resources Co.

Loans partially repaid by King show outstanding amounts totaling almost $9 million and a number of unpaid mortgage payments totaling a much smaller amount.

Property transfers show that King sold on May 31, 1971, to his children's trust [illegible] leasehold [illegible] at 21 Sunset Drive in Cherry Hills Village and other property at Vail, Palm Springs, Calif., Maui, Hawaii, and in Bali, all for a total consideration of an annuity of $2,192,700, payable for the rest of King's life.

On Dec. 31, 1970, King sold a $1.5 million note from his Bahamas Trust and an account receivable from the trust, totaling $1.3 million to Colorado Corporation for $1,000,000.

Real estate

Other property transfers include real estate in Grand County, sold to former associate Norm Steenbok in January of this year for $405,776; a Cessna aircraft to Combs Aviation for $2,500 and another airplane for $125,000; Rocky Mountain Natural Gas shares worth $34,163.

Taxes due and owing the U.S. are broken down to include $1.9 million in interest equalization taxes; $1.5 million in gift taxes; $1.8 million in tax on transfers to avoid income tax, and $497,880 in income taxes.

King notes he disputes each and every tax liability asserted in a jeopardy assessment made by the IRS last month in its entirety. The IRS attached liens worth $1.8 million against King's property.

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BANKRUPTCY FILE

THE DENVER POST
[illegible] 3

King Filing Shows $668,720 Balance

By CHUCK GREEN
Denver Post Staff Writer

Oilman John M. King's financial condition apparently is much worse than indicated in a petition filed June 1 in federal bankruptcy court in Denver, according to drafted papers filed in the same court Friday.

The earlier papers showed King's assets at more than $47.1 million, while his liabilities were estimated at nearly $54.8 million. But the statements filed Friday showed the $7.5 million balance whittled down to $668,720.

In the 180-page packet of documents, King's attorneys said his actual assets are [illegible] $676,712.54, with liabilities of $[illegible]9,992.56. Among King's debts is a $5.3 million bill from the Internal Revenue Service for taxes, penalties and interest. He has disputed all of the IRS claims.

The papers were filed with Richard Matsch, chief bankruptcy referee of the U.S. District Court in Denver.

Also filed Friday were statements of affairs for King's wife, Carolyn. Again, the account different greatly from documents filed June 1.

She was in a solvent stance, according to the earlier papers, not deeply in debt according to the documents made public Friday.

Her assets changed from $72,021 to $101,274 but her list of debts skyrocketed from the early estimate of $4,288 to nearly $5.2 million.

Major portions of the couple's debts are shared between them, however.

In addition, King's statement said nearly 250 creditors "may assert claims" against him that aren't listed in his account of liabilities. The Denver Post verified that several of those listed have claims against King for more than $4,000 each.

The Kings asked protection of the bankruptcy court last week in trying to straighten out their books. They filed separate proceedings under federal statutes providing for arrangements of creditor payments.

The first meeting with creditors is set June 30 and is expected to last at least three days.

Matsch has ordered all legal proceedings against King temporarily halted pending the outcome of the court's action. He also ordered IRS to stop enforcing $8.3 million in tax liens against King.

King's stated worth was comprised almost completely for negotiable and nonnegotiable instruments and securities, totaling $41.57 million.

Other assets included $[illegible],347 in debts due him on open accounts, $146,156 in various personal property, $8,200 in cars, boats and other vehicles, including five storage trailers and 90 small trailer units, $10,000 in real estate, bank deposits of $5,557, a horse valued at $1,000, household goods worth $5,000 and $1,515 in cash on hand.

In addition to his tax debt, King's liabilities include $28.5 [illegible] in secured claims, $[illegible] in unsecured claims, $[illegible] in accounts payable, $[illegible] in accounts [illegible] during [illegible] the debts and [illegible] listed.

[illegible]'s statement [illegible]

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John King $60B millions in future, creditors told

By MORTON L. MARGOLIN
Rocky Mountain News Business Editor

John M. King, Denver financier and oil man, told his personal creditors in bankruptcy court Wednesday that only the peculiarities of Middle Eastern politics and the perversities of nature stand between him and mounds of money.

He was in court under the Chapter 11 provisions of the Bankruptcy Act which afford a debtor protection from his creditors while he and they try to work out an arrangement to pay the debts short of bankruptcy.

But an ebullient King left no doubt he is confident he'll once more be on top of the heap—if only he isn't forced out of position.

That position consisted of a ground-floor foothold in what he called the mineral men Canadian Arctic and a first map in line to harvest the wealth of the Israeli-held Sinai Desert.

The Israeli oil project is now in suspension because of the Middle East war, and is listed as being worth nothing on King's file of assets.

But he told the creditors, "One day the Israelis are going to step in and resolve that situation. I have no doubt they'll win. Then the project into which we have poured $17 million will repay the investment in 24 months, and after that we'll repay the investment over and over again every three weeks."

King personally has $1.12 [illegible] in the Israeli [illegible] venture. Asked if he could sell his interests he replied, "I don't want to sell it. But if I did, I'd have to find a real swinger, who would buy it on the basis of now he guessed the diplomatic game would resolve itself."

Arctic prospects cited

The Arctic prospects, King said, are even better than the Middle East in his opinion. And that situation to hear him tell it, won't take as long to resolve. He estimated his personal holdings, which are an undivided one-sixty-fourth of King Resources' holdings, could bring him $40 million to $50 million within eight months to a year if exploratory drilling now under way pans out.

Representing King at the hearing was a new lawyer, William Rochelle of Dallas, who told the creditors in his opening statement that everyone would benefit if no one forced King to sell one of his holdings—particularly those in the Canadian Arctic.

Rochelle was introduced by King's other attorney, Louis Isaacson of Denver, as a specialist in cases involving the reorganization of oil and gas firms.

King told of finding "enormous gas and oil reserves" off the Mediterranean coast which Israel can claim under international law.

"I won't tell you how big," he said, "but when one well blew it almost destroyed the drilling ship. Another ship was bombed by the Palestinian Liberation Group as we brought it around Africa to position it and some wells were abated.

"Fun and games," he added, "but like all big gambles, it carried a big risk."

King was in the witness chair almost all day as Richard Matsch, bankruptcy referee, tried to determine what assets he owned.

Many of the assets proved ephemeral, with creditor banks withholding payments that King's lost Internal Revenue require them to pay his obligations.

Bank lins not paid

That, for example, applied to some $5,[illegible] King claims he has coming to him as profits on an airplane lease deal he made with Braniff. The airline is paying Continental Illinois National Bank of Chicago and is current but the bank has not, according to King, forwarded his share.

There are similar examples. Thursday morning Matsch will rule on a petition which King's attorneys have filed to hold off IRS so King can have access to his funds and bank accounts, which IRS is trying to block.

At the start of the hearing, King's present financial plight was graphically outlined in a series of questions from Matsch and answers by King. The exchange went like this:

Q. What has been your occupation during the past few months?

A. Mostly getting ready for this hearing. But I have been doing some consultant work in the oil and gas industry.

Q. What kind of income does your consulting work bring in?

A. Between $5,000 and $6,000 a month.

Q. And your expenses?

A. About $19,600 a month, which leaves a deficit of $13,000 to $14,000 a month.

Q. How do you make up the difference?

A. With borrowings from those few friends who still have faith that I can turn this thing around.

King made it clear he believes he can turn his financial situation around once the bankruptcy matter is out of the way.

'Once I have time'

"Once I have the time to attend to business I am sure I can make up the deficit," he told Matsch.

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The [illegible] a [illegible] plan. Members are John Carter of the Cleveland National Bank; Gerald K. Bateman of the Mercantile National Bank of Chicago; Robert W. Cowan of the First National Bank of Denver; Hardin Holmes a Denver attorney representing the Overseas Development Bank of Geneva; and Charles Smuckler of the Security National Bank of Denver.

Rochelle attempted to object to the inclusion of a representative of Overseas Development Bank, which is a subsidiary of IOS. But the court accepted the state — noting it was a creditor's committee, and the debtor had little standing in its selection.

Local bank claims presented included: First National Bank of Denver $520,264.56, of which $507,450.95 is unsecured; and Security National Bank of Denver $285,200.14, of which $279,950.14 is unsecured.

King Resources shows $4.4 million quarter loss

King Resources Co. Wednesday reported a loss of $4,483,069 for the first quarter of 1971, compared with a profit of $4,225,074 in the same quarter last year.

That works out to a loss of 24 cents a share, compared with a profit of 22 cents last year.

Gross revenue for the first quarter was $5,979,152, this year, compared with $16,946,147, for the like quarter last year.

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[illegible] creditors [illegible] IRS lawyers contended that federal tax law is in conflict with bankruptcy law on the point, and that the IRS is entitled to any revenue produced by King for as long as he lives in payment for taxes which the government claims he owes.

Starling agreed that creditors couldn't claim income earned by King through or as the result of assets acquired after the filing of the petition, but asked the court for an accounting of King's business activities. He said such an accounting is necessary for creditors to know whether King is dealing in pre-petition or post-petition assets.

Matsch's order provided for such an accounting to be worked out between lawyers and to be reported privately to him.

BANK ACCOUNT

The order provides for a bank account through which King may transact business, but which the IRS may not attach or file claims against. Matsch refused to order the IRS to lift a lien against a 1946 Beechcraft airplane, owned by King Resources Co., so that King might use it in his business activities.

King has claimed he can't return to business operations and pay off his creditors unless the court holds off IRS actions against him.

Most of the bankruptcy hearing Wednesday was devoted to King's descriptions of present assets and prospects for future income.

King discussed in detail for more than an hour oil lands in the Canadian Arctic which he said could bring him income of $40 million to $90 million in the next year. Matsch said he considered the Arctic lands "[illegible]" to the question of whether King will be permitted to go into bankruptcy according to Chapter 11 proceedings under which his petition was filed.

Rochelle said it is because of the potential of the Arctic oil lands that he clashed King's [illegible]

[illegible] with [illegible]

The lands were [illegible] under a right-of-purchase agreement with the Canadian government by King Resources Co.'s King said. King Resources later sold the acreage rights to a subsidiary of Investors Overseas Services (IOS) whom Rochelle identified Wednesday as King's "principle adversary."

King represented the Arctic property as one of the richest oil fields in the world and said the technology now exists to extract and transport oil from the frozen islands.

He said there is an 80 per cent chance that two wells now being drilled on Graham Island in the Arctic will become producers, although there are as yet no producing wells on any of the acres controlled by King.

LISTING MADE

King also said Wednesday his holdings in the Sinai desert are similar and await only the resolution of the Arab-Israeli conflict before they can be fully exploited. He said he has already put $17 million into the Israeli lands, but they are listed as worth nothing in the schedule of assets.

King also told Matsch Wednesday that his present income is just under $6,000 monthly, with expenses of about $19,000 monthly. He said the income is from consulting fees through the Colorado Corp. He makes up the deficit through borrowing from "friends," he said.

King said he is confident he can reclaim his business ventures "once I have the time to spend on business."

CLAIMS ENTERED

Nine creditors Wednesday entered claims of more than $7.8 million, with the largest debt owed to Central National Bank of Cleveland, Ohio, which claims $2,673,158. Local obligations are $725,950.34 in unsecured loans from Security National Bank, Denver, and [illegible] unsecured, owed to the First National Bank of Denver.

A creditors committee [illegible]

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King tells how people 'used' him

STORY ON PAGE 77

'I thought I was dealing with friends,' King says

By MORTON L. MARGOLIN
Rocky Mountain News Business Editor

"I thought I was dealing with friends," John M. King, Denver oil man and financier, told federal bankruptcy court Thursday as he detailed a sellout by business associates, commitment to losses by overenthusiastic employes, and dollar-devouring deals set up by cronies.

It was the second day in the witness stand for King as he sought protection of the courts under the rehabilitation section of a Chapter 11 proceeding in which a debtor escapes bankruptcy by working out a plan to eventually pay off creditors under court supervision.

Richard Mauch, bankruptcy referee presiding at the hearing, agreed, over Internal Revenue Service protests, to continue an order staying tax liens against King, and to allow King to set up a bank account for future operations under court supervision.

But he turned King down on a petition to reclaim a Beechcraft airplane seized by Internal Revenue last May.

Mauch ordered opposing attorneys to draft an order for his signature, but after several hours of conference, they were unable to agree on its details, and the matter had to be postponed until Friday.

The key problem facing the lawyers is whether King will have to deposit all income in the account supervised by the court, or if he can selectively keep some of the income to use without supervision of the court.

The bankruptcy court passed a key landmark in the case almost without a ripple. Judge Mauch stopped proceedings at one point and asked:

"Doesn't anyone want to move for appointment of a receiver?"

No one did, so none was appointed.

Then King returned to the witness stand and began a detailed explanation of his multifaceted business affairs.

He told how Mountain King Construction Co. —a losing proposition from the start — came into being.

"We were doing some land leveling work at the Little King Ranch," he recalled. "We wanted to move some earth, fix up a landing strip, and so on.

"I had seen a notice that a construction company was going out of business and was selling its equipment at a bankruptcy sale. I mentioned one day, as I left the office, that we might pick up a few pieces of equipment that way.

"When I got back from my trip a few days later," King said, "I found we had bought 25 to 30 pieces of heavy equipment."

King said some of the equipment was used to do work on the ranch, and then work was [illegible] on the rest of it.

"We got [illegible] and put on a crew," he said. "But the more enthusiastic we got, the more money we lost."

He indicated it was difficult to verbalize anything with someone going to work on the project and King winding up with the bills.

He told about a deal involving the giveaway of 10,000 shares of King Resources and $15,000 to the Mercantile Bank & Trust of Freeport, Bahamas, in connection with two trusts for his wife and children.

King testified he did not set up the trusts, nor was the bank accountable to him.

"They were created by a very good friend, Moritz von Hersan," King said. "I remember so well how prophetically he once suggested all might not be roses for my wife and children.

"A short time later he wrote a letter to my wife saying he had set up two small trusts for her and the children in the Bahamas.

"Some time later when we were together on a safari, I mentioned that Investors Overseas Services (IOS) was coming out with a new preferred stock, and said that was the kind of investment the children's trust would do well with.

"Later, much to my surprise, he informed me he had bought the stock mentioned and had borrowed $150,000 to $200,000 to do it. He suggested I help.

"So," King said, "I sent 10,000 shares of King Resources, and then later $15,000 in cash to the Mercantile Bank."

He told the court he had no legal papers detailing or proving those transactions.

The bankruptcy referee probed deeply on recent securities sales by King, trying to find out in each instance what happened to the money. In most cases, it was kept by the banks selling the stock to help satisfy debts owned by King.

The bitterest case detailed by King Thursday involved the sale of two blocks of stock in Franklin Life Insurance Co. by the Southern California First National Bank of San Diego — the same bank that later foreclosed on the Little King Ranch.

That bank had 25,000 shares of the insurance company pledged on a personal loan from King.

"When the stock market crash came last year, they sold it without consultation and without informing me," he told the court. "Somehow they got the erroneous impression from an employe of Colorado Corp. that I wanted the stock sold against the note. So they sold it and seized the $282,565 proceeds.

"I probably should have taken action against them, but I was so wrapped up in other affairs, I didn't," King said.

"I was left with 5,900 remaining shares of Franklin Life, and decided to dispose of it. I asked an employe to handle it and he put it in the hands of the San Diego bank. They sold that for another $71,468, and seized those receipts too.

"I thought I was dealing with friends, but later when I decided to take some action, the attorneys told me the second sale made it unlikely I could recover on the first."

As the court probed for other assets, King [illegible] had sold a [illegible] one from the [illegible] to him [illegible] friend [illegible] [illegible] [illegible]

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. BK-3-2302

IN THE MATTER OF	)	
	)	DEPOSITION OF
KING RESOURCES COMPANY,	)	
	)	A. ROWLAND BOUCHER
Debtor.	)	

PURSUANT TO NOTICE AND THE FEDERAL RULES OF CIVIL PROCEDURE, the deposition of A. ROWLAND BOUCHER, Chairman of the Board of King Resources Company, was taken by United Bank of Denver National Association at 10:30 a.m. on Monday, September 13, 1971, at 1200 American National Bank Building, Denver, Colorado, before Thomas T. Tomko, Notary Public and Certified Shorthand Reporter, State of Colorado.

APPEARANCES:

For the Deponent: LEONARD GESAS of
Gesas & Manos
Attorneys at Law
29 South La Salle Street
Chicago, Illinois

For the Trustee: KIEL BOONE (Pro Se) of
Johnson, McElroy, Cravens &
Boone, Attorneys at Law
1900 Mercantile Dallas Building
Dallas, Texas

For United Bank of Denver National Association: (Identure Trustee)	THOMAS S. NICHOLS and ROBERT L. SHANSTROM of Davis, Graham and Stubbs Attorneys at Law 1200 American National Bank Bldg. Denver, Colorado, and JOHN M. McMULLEN of Jenkens, Spradley and Gilchrist Attorneys at Law Suite 2280 First National Bank Dallas, Texas
For First Nat'l. City Bank of New York (Indenture Trustee)	THOMAS J. KERWIN of Hodges, Harrington, Kerwin & Otten, Attorneys at Law Denver Club Building Denver, Colorado
For First Nat'l. Bank of Denver; Bank of America; First National Bank and Trust Company of Tulsa; Pacific National Bank of Washington, and Farmers and Merchants Bank and Trust Company of Tulsa:	HARRY M. STERLING Attorney at Law Capitol Life Center Denver, Colorado
For Petitioning Creditors:	W. M. BLACKBURN, JR., of Thompson, Knight, Simmons and Bullion, Attorneys at Law 2300 Republic National Bank Dallas, Texas

* * *

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4	1970 annual report of King Resources	35
5	Notice of regional informational meetings and informational circular dated 9-71	58
6	"Motion to transfer"	61
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* * *

PROCEEDINGS

MR. NICHOLS: This is the deposition of Mr. A. Rowland Boucher, which is being taken pursuant to notice served on the parties indicated in the notices and continued according to notice until today at ten o'clock.

It is now 10:30. We have been advised that Mr. Blackburn was to attend this deposition but he hasn't appeared yet, and in light of everybody's schedule, we have to proceed.

MR. GESAS: Have you provided the reporter with a notice on the continuance?

MR. NICHOLS: Yes.

A. ROWLAND BOUCHER,

the deponent herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. NICHOLS:

Q Would you state your name and address, please, Mr. Boucher?

A A. Rowland Boucher, 25 South Lane, Englewood, Colorado.

Q And as of this date, your position with King Resources?

A I'm chairman of the board of the company.

Q Do you have any other position with King Resources?

A No.

A Yes.

Q Is there an asking price on that property at the present time, for the total real estate?

A I can speak only to the 70 percent.

Q Do you have an asking price on that?

A Of about 2.7 million, 2.75. That's the range that Mr. Cooper and I have discussed would be acceptable.

Q Do you have any written appraisals on that property?

A I don't think so. What do you mean by "written appraisals"?

Q Well, formal estimates of the market value, opinions of value by outside appraisers.

A Well, I have talked with the people who assembled it for us on several occasions, and they maintain that it's illy for us to take a discount of any kind.

Q I am not sure I understand what kind of a discount ou are contemplating.

A Well, the price that Mr. Cooper and I found ceptable would represent a discount of some magnitude er our acquisition cost.

Q What was your acquisition cost? Do you have that gure in mind?

A We've got around 3.1 million in it.

Q That property, too, is important in terms of the

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future operations of the company, is it not?

A Oh, yes, sure.

Q Now, with respect to the interests held in the Arctic, have you received any offers for those interests?

A No.

Q Have you offered those for sale?

A Not in 11 months or so. We did consummate a sale to the Sun Oil Company in September of 1970.

Q There haven't been any other offers by you since that time? Have you offered it for sale since that time?

A No.

Q Do you have any appraisals on that property?

A Yes, we do.

Q Would you describe them generally?

A Well, they're internal appraisals. I asked our people to put an appraisal together. As I recall, it was in January of 1970.

Q Are there any outside appraisals?

A Not to my knowledge.

Q Do the Arctic properties appear in the Kravis reports at all?

A No.

Q What is the value that was placed on the properties internally?

A I'm not going to disclose that.

Q Are there documents that comprise this report?
A Oh, yes. I have a written analysis of it.
Q There is a written analysis?
A Yes.
MR. GESAS: Tom, can I suggest something?
MR. NICHOLS: Surely.
MR. GESAS: You want to know that it's substantial?
MR. NICHOLS: That's right.
MR. GESAS: He may answer that, I think, without pinpointing that it runs well in the millions.
Q (By Mr. Nichols) Does the value exceed $50 million contained in this report?
A Oh, I don't have any idea.
Q You don't have any idea?
A If it exceeds 50 million?
Q Yes.
A What you're talking about there is putting a price per acre on the stuff.
Q Well, I would like to get just some floor on the value as you see it. Would you give me a value and say it is above some number?
A It's above our cost.
Q What was the cost?
A I don't know, Tom, offhand.
Q Is it in excess of 10 million?

A We control or own at this point in time in excess of 3 million acres up there, three and a half million, perhaps. I don't know the exact number. And I'm sure there is a range of value that can be dug out that might satisfy you. It relates to transactions that have been consummated in the Arctic lands of properties that I would consider similar. And that range, it's my recollection, would be in the range of ten to eighteen dollars per acre. Now, this is all public information. And what I have given you relates to what has been in the Oil & Gas Journal and Oil Weekly of Canada.

Q So, on the basis of that, you would put some estimated value on the three and a half million acres of not less than $35 million, would you?

A You would.

Q Well, that would be the result I would reach by doing some arithmetic.

A That's exactly right. It would be the result of your reviewing the transactions that occurred up there.

Q Now, you are a man with knowledge and experience in that area. Does that value represent a realistic number or something in the range of what you consider those properties to be worth?

A Sure, it's realistic based on what has been done.

Q Well, is it realistic in light of all other existing

factors, too, whatever they may be?

A Well, I'd have to go the other way. If you're asking, would we sell our position for that range today, I'd have to say no.

Q Because the price is too low?

A Because I think it's a very significant long-term asset of this company.

Q So there is a question in your mind as to whether $35 million would be enough for the property at the present time?

A Yes.

Q It's apparent from all this, is it not, that this Canadian oil property is a very important part of the company's future?

A Yes.

Q Is that three-and-a-half-million-acre figure net acres or gross acres?

A It would be net to us.

MR. NICHOLS: I have no more questions.

THE DEPONENT: Tom, those are net permit acres. They're not net lease acres.

MR. KERWIN: I'm assuming when you say you're done for the day, there are some things that we are reserving that we are supposed to get further answers to?

MR. NICHOLS: Absolutely. We might go over those.

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CERTIFICATE

State of Colorado)
) ss.
City and County of Denver)

I, THOMAS T. TOMKO , Notary Public and Certified Shorthand Reporter, State of Colorado, duly commissioned to administer oaths, do hereby certify that previous to the commencement of the examination of the said A. ROWLAND BOUCHER said witness was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and was thereupon interrogated as set forth in the foregoing deposition;

That the said deposition was taken in machine shorthand by me at the time and place aforesaid and was reduced to typewriting under my supervision;

That the foregoing is a true transcript of the questions asked, the testimony given, and the proceedings had;

That I am not attorney or counsel, or in any way connected with any attorney or counsel, for any of the parties to said action, or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 13th day of Oct., 1971.

My Commission expires December 9, 1972.

Thomas T. Tomko
Notary Public

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Continued Examination of John M. King, August 11, 1971, at 9 a.m., by Harry Sterling, counsel for Creditors Committee

78. Terms of sublease of La Jolla house by JMK—for August-September, to return $2500-$5000 to estate. No rent received yet. None due. No security deposit yet received, though due.

Schedule B-2-B.

79. Notes from Greenwood Development. What actions taken to collect? None. No knowledge of these notes.

80. Note from Frank Sweetser. "Doesn't owe the money yet."

81. Note from Boucher. Doesn't owe the money yet.

82. Note from #1 Trust (Childrens). No payments received.

83. Notes from #2 Trust. No payments received. #2 Trust claims it has offset.

84. Note from Erlin Knoll. No efforts to collect payment. Not really sure it is owed.

85. Note from Wayne Seatman. Arrangement for exchange of stock for indebtedness being negotiated. Court must approve the final arrangement.

86. Note Norman Steenhof, $300,000+. No payment due since petition. Payment before petition was an advance payment, made early at JMK's request.

87. Robert Rath Note. No effort to collect payment. JMK doesn't think there are any assets on which to collect.

88. Regency Investments Note. No effort to collect. JMK doesn't know substance of indebtedness.

89. Greenwood Development again. (Different notes.) JMK doesn't know if they're due or not.

90. King Resources stock, some 2,900,000+ shares, are listed as owned by JMK, although JMK is not sure whether number is absolutely accurate. However, shares pledged to banks in Schedule A-2 (2,122,806) total less than the total in

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Schedule 2-B2. Of the 1,528,000 shares of Colorado Corp. listed in Schedule A-2 as owned by JMK, only 1,209,000 are listed as pledged to banks in Schedule 2-B2. Mr. Sterling wonders where the other shares are. JMK doesn't know offhand. Both figures will be worked out between counsel.

91. King Foundation. JMK was officer of personal KF at one time. King-Wolfe Companies loan: JMK doesn't know if he was an officer at that time. JMK doesn't know where the records of KF are.

92. Demsey-Tegler transaction. New York brokerage firm had capital problems. JMK loaned them stock. Protective covenants in the loan have been broken. At time of loan, DT was already "underwater," and fraudulent financial data was provided. The stock has been seized by The New York Stock Exchange and is being held by them. JMK last discussed this with The New York Stock Exchange three or four months ago. Notice of demand on The New York Stock Exchange not to sell stock made by Mr. Fishman five to six months ago.

Schedule B-3. Accounts Receivable.

93. Efforts to collect since petition.

(a) Dickson receivable is in the hands of banks (creditors) and JMK expects them to take action. He has taken none. Loss certificate required by RMNG. Needed bond therefore. Could not get any bond. So transfer can't be made. Colorado Corp. is registered owner of the stock. They say that JMK is the owner and they hold for him.

(b) Kennedy. In brokerage business. Told JMK that a check for $2500 was sent, but it has not been received.

(c) Receivables of Colorado Corp. JMK believes they are collectible, but hasn't made any efforts to collect.

(d) Receivables from KRC. JMK believes that KRC is offsetting amounts allegedly due from him.

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94. Only KRC stock is pledged in the Denver Fegler transaction.

Schedule A-2.

95. Payment to Mercantile National Bank of Chicago in February 1971. $25,000 principal. Also interest. JMK: "same testimony as before." JMK doesn't remember anything about it now. Dealt with Mark Livingston, James Sweet, Mr. Gleason. JMK "thinks" that the payment date "just came up" when he had cash. That's why he paid Mercantile when he didn't pay any others. (Some others were offset, however.)

96. Payment to Petry Construction Company of some $30,000 in February 1971. Job? Work on house on Sunset. Petry wanted part payment (owed more than $30,000) before continuing work to make house "operative and viable." Not that way yet in JMK's opinion. Additional work done and bill was sent for remainder due. Payment was for work done and work to be done. "Part and parcel of both." Did they say anything about not continuing if not paid? Question not really answered. Were they concerned about the balances owing? No recollection by JMK. Only remembers the epithets he used in the conversation.

97. Farmers and Merchants Bank of Tulsa: May 1971: Charged JMK's account with $5500 for payment of or on a note of Colorado Corp. No recollection by JMK.

98. $200,000 in Treasury Bills. What was done with them? JMK doesn't have them. Used in various bill payments, lawyer retainers, for cash, for house in La Jolla, etc. Harry Sterling concludes, retaining right for further questions on financial statements of JMK.

99. Lou Isaacson. Denver Fegler, New York Stock Exchange, asserts ownership of the stock involved. Certificates are in hands of United Bank of Denver. Has not transferred ownership.

100. Mr. Owens (United Bank) Mr. Owens's bank has Dragnet clause in JMK loan agreement; picked up 6,600 shares of Rocky Mountain Natural Gas stock which originally came from Colorado Corp. in 1969 as collateral for its loan. Colorado Corp. paid off its note, but the bank retained the shares as additional collateral for JMK's loan.

Questions by Mr. Silverstein, attorney for the Internal Revenue Service.

101. Schedule 10-A. Source of repayments to Children's Trust. August 8, 1970, $200,000. September 23, 1970, $160,000. Question left for answer by counsel.

102. Schedule 11-A. Property transfer. Real properties transferred to domestic Children's Trust #1. Deeds and trust documents relating to them not recorded until August 30. When were the meetings concerning these with relation to I.O.S. (May 1970) negotiations? JMK can't remember exactly whether before or after, but "assumes" contemporaneously or after. Mr. Bye is the only attorney remembered by JMK in connection with these transactions.

103. Maui property: Colorado Corp. acquired it on May 13, 1970. How and when did JMK acquire from CC? JMK recalls nothing. "I can get that data for you."

104. Annuity agreement of May 1970. To pay $157,000 annually each June 1. June 1, 1971, payment of $157,000. JMK hasn't received it. They are not going to pay it. Are they offsetting against interest owed them? JMK doesn't know.

105. Jewelry and other property given to children by JMK. Detailed list attached to 1970 Gift Tax return. Available at JMK's office. Appraisal: at David Coffey's office, perhaps.

106. Schedule 11-A4: Steenhof: $955,000 KF note sold to Steenhof for $1,000 for tax deduction purposes. Power of attorney given by Steenhof in relation to matter? JMK doesn't know. Doesn't know when exactly the documents were signed.

107. Schedule 11-A2. Sale of notes to David Perry of $3,400 for $1,000. Same reason. Documents signed here in Denver.

108. Treasury Bills [issued prior to June 1, 1971]. None possessed on June 1, 1971, by JMK or by anyone on his behalf. Not possessed <u>since</u> June 1, 1971, by JMK or by anyone on his behalf.

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109. Schedule B-2G. Listing of automobiles. All in California? No. One in Vail and one in Colorado. Jeep Wagoneer in Vail. Imperial in Colorado. King doesn't own any 1967 Cadillac registered in Colorado, although Denver Motor Vehicle shows one in his name. JMK thinks it may belong to Colorado Corp.

110. Property stolen: No list prepared. No claim has been made to insurance company. Claim anticipated? Maybe. Reports to local police department? Yes. Cherry Hills Police Department. Estimate of value? No basis, since no list of former possessions against which to check present possessions.

111. $1,988,000 promissory note made by Edward M. Cowett in JMK's behalf in 1970. JMK doesn't remember it. Believes it is a forgery. Guaranteed by Atlas Investment Trust.

112. Robert Rath note: owed JMK cash at time of petition. JMK has stock in Fox, Rath, International as collateral. Agreement introduced that purports to be arrangement whereby King releases Rath from note and King retains Fox, Rath, International stock. JMK's "understanding" is that this deal fell through because of IRS interference with Rath. Testifies that he can't tell whether the signature on the agreement is his or not.

113. Question by Mr. Rochelle of when the government's proof of claim will be filed. Answer: As soon as audits of tax returns are completed. No estimate of time can be given. No further questions of JMK at this time.

July 8th order by court reports to be given to only three members of Committee. Objection made by Sterling that this places the three members in an awkward position regarding confidentiality. Judge Matsch doesn't understand that the reports are to be confidential. The reports "are public records." So no problem.

Adjourned until 9 a.m. on Friday, August 13, 1971, in same Courtroom.

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Continued Examination of John M. King, August 13, 1971.

Statements by Mr. Rochelle, answering questions raised in the Wednesday meeting.

1. Mercantile loan: payment of February 1971; obtained renewal of loan until April 26, 1971 (90-day renewal).

2. Note of $1,988,000 from Ed Cowett: hasn't found out anything. Will continue checking facts. Don't want intensive interrogation of JMK on this note until facts are discovered.

3. Inventory of personal property attached to Gift Tax form made IRS Exhibit #2.

4. Stipulation between IRS and JMK's attorneys. Made an order of the court. Nothing said aloud about subject matter.

Questioning of JMK by Mr. Sterling, concerning financial statement, giver to First National Bank, dated June 30, 1967.

List therein of numerous municipal bonds. Owned by Becker Trust. JMK had thought at the time that they were in CBK's name. Discovered the truth about the time of Mr. Becker's death.

End of questions of JMK.

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Judge Matsch believes that the next meeting will take only one day. Total transcripts will be available in about three weeks. Adjourned until Tuesday, October 5. One day only; 9 a.m. in Courtroom B.

Debtor's application for appointment of special officer presented by Mr. Rochelle to handle: (1) collection of Accounts Receivable, and (2) determination of whether to proceed with certain causes of action which debtor may have.

Retirement to chambers to discuss the application.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
-against-	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT KING'S MOTION TO DISMISS THE INDICTMENT

This memorandum is respectfully submitted on behalf of the defendant King in reply to the contentions made by the Government in opposition to King's motion to dismiss the indictment or, in the alternative, for a hearing on the ground that evidence upon which the indictment is based or which the Government intends to use at trial was derived, directly or indirectly, from testimony given by King while under immunity in his personal bankruptcy proceedings.

Exhibit C

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On the basis of an incomplete factual presentation,* the Government urges this Court to deny King's motion without even holding a hearing with respect to King's contentions. The Government further argues that any hearing that might order should be delayed until after the trial.

The Government's papers not only are totally inadequate with respect to the points raised by King in his moving papers, but also raise brand new issues involving tainted material in the prosecutor's files to which we must now address ourselves.** Indeed, the Government's answering papers confirm the probability of taint in this case and make it clearer than before that the indictment should be dismissed or, at the very least, a hearing should be held. Unless the many gaps and inconsistencies in the Government's presentation can be cleared up before trial, the defendants will be subjected to what the Government itself has warned will be a lengthy and complex trial on the basis of tainted evidence.

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* The United States Attorney's Office has informed defense counsel that the affidavits of six individuals named in defendants' moving papers as possible sources of or conduits for tainted material have not as yet been received and will be filed by "the end of the week" (Friday, May 21, 1976).

** In their papers filed on May 19, 1976, the Government revealed for the first time the existence of four categories of documents either constituting or directly relating to the bankruptcy testimony of the defendants, two of which relate to the defendant King. In response to an inquiry by counsel for Boucher, the Government later in the same day submitted to the court additional documents which also have a bearing on King.

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POINT I

DEFENDANT KING IS ENTITLED TO BRING THIS MOTION PRIOR TO TRIAL AND DID NOT DELAY DOING SO IMPROPERLY

The Government contends that defendant King's motion, which raises basic constitutional issues, should be denied out of hand since it was filed too late. The indictment was filed on January 20, 1975, after which the defendants were given 45 days by this Court to file motions. According to the Government, the failure of King to bring a motion based on immunity within such time "can only be explained by gamesmanship *** of the most outrageous and intolerable sort." (Vizcarrondo aff't p. 2).

There would have been no conceivable tactical reason why King and his counsel would have intentionally withheld this motion. To the contrary, if the immunity motion had been brought earlier, King might well have been entitled to inspect the Denver and New York grand juries, SEC transcripts and other Jencks Act materials for which we have long been pressing. The Government recognizes the fact that it has not been prejudiced by the delay by arguing, at page 14 of its memorandum, that the Government should not be required to reveal its sources of proof prior to trial. Undoubtedly, this objection would have been raised with considerably more vigor if the immunity motion had been made in March 1975.

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As an officer of this Court, counsel assures this Court unequivocably that the timing of this motion had nothing to do with tactical manipulation or a desire for delay. The motion was not brought earlier because, in the judgment of counsel, the need for further information about the parameters of the Government's proof and the press of investigating the facts and preparing for trial made it inadvisable if not impossible to do so. In any event, there can be no argument as to timeliness with respect to motions directed to the material which was made available to counsel only yesterday (in violation of the Government's obligation under Rule 16 of the Federal Rules of Criminal Procedure to make discovery more than ten months ago).

The Government's statements with respect to timeliness are at best disingenuous and are factually incorrect in certain respects. For example, the Government implies, inaccurately, that King was represented by counsel during the 45-day period allowed by the Court for motions. In fact, counsel was first retained on a Friday evening, six days before the expiration of the time set for motions. There had been no opportunity at that time for counsel to discuss the substance of the case with King and counsel spoke with him for the first time on the following Monday. With the motion date set for Thursday, three days away, counsel requested,

first of the Government and then of this Court, an adjournment of a week and a half in order to prepare motions. The Government refused its consent and the Court denied the application. Counsel then asked for an extention of two working days to the following Monday. Again the reques was rejected by both the Government and this Court. Therefore, counsel was compelled to file motions three days later on the basis of a day-and-a-half's interview with the defendant who was forced to return to Denver on Tuesday night for vital personal reasons and before counsel had the opportunity to examine a single document relevant to this case other than the indictment. Counsel had no idea at that time that any bankruptcy testimony even existed.

Under these circumstances, it cannot reasonably be contended that King's present motion should be denied because it was not instituted within the original 45-day period. Not only was it impossible for such an immunity motion to have been brought within that time, but also it appears that there was no legal requirement for King to have done so.

For its part, the Government argues that the motion is untimely under Rule 12(f). Since that Rule was not in effect until December 1, 1975, long after the expiration of the apocalyptic 45-day period, it would obviously be inappropriate to deny the motion based upon that Rule.

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While it is true that at the time this action was initiated Rule 12(b)(2) provided that certain motions ought to be brought prior to trial and had been interpreted to allow a court to provide a time period within which such motions were to be brought, there has been no showing that this particular motion falls within the kinds of motions which were required to be brought before trial when this action began. Indeed, King contends that even under the present rules an immunity motion need not be brought prior to trial under the current rules. Obviously, if such a motion is not required to be brought before trial, King's motion cannot be deemed untimely.

The Advisory Committee Notes to Rule 12 make quite clear that while there are certain motions which must be raised before trial, there are other motions which may (but need not) be raised by that time. Defenses involving immunity are specifically listed by the Advisory Committee as falling within the latter category of motions which need not be raised before trial. Accordingly, King's failure to raise his immunity motion during the 45-day period provided by the Court would not be deemed to preclude the motion at this time.

If this Court were to conclude, however, that King's immunity motion is untimely, that determination would not end the matter. It is, of course, quite clear that this

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Court has discretion to accept an untimely motion. See, e.g., United States v. Seeley, 301 F.Supp. 811 (D.R.I. 1969) where the court allowed a motion to dismiss an indictment to be brought on the first day of the trial. See also, United States v. Federman, 41 F.R.D. 339 (S.D.N.Y. 1967); United States v. Jones, 322 F.Supp. 1110, (E.D. Pa. 1971). Cf. United States v. Vignara, 307 F.Supp. 136 (S.D.N.Y. 1969). The exercise of such discretion is particularly appropriate where constitutional issues are being raised. See, United States v. Solomon, 216 F.Supp. 335 (S.D.N.Y. 1963). Furthermore, the fact that King was not defended by counsel until the last few days of the 45-day period should also be considered. See McGill United States, 348 F.2d 791 (1965).

Finally, this is a particularly inappropriate case for a refusal to hear the immunity motion as untimely. Because of our inability to obtain an extension of time within which to make motions, we were forced to do little more than mirror the motions of then counsel for defendant Boucher and to rely upon the facts and legal arguments set forth by them in their papers. The Government's contention that we should have, at that time, submitted our motion to dismiss on the ground of taint arising from King's bankruptcy testimony is astounding. At that time, we did not know that King had testified at a bankruptcy proceeding, had not interviewed even one potential witness in the case and had

not seen a document other than the indictment which related to this matter.

Directly following the 45-day period, and continuing through the end of October 1975, Michael F. Armstrong, trial counsel in this case, was fully engaged as appointed counsel by the New York Court on the Judiciary in connection with the investigation and subsequent trial of Judge Wilfred A. Waltemade. Mr. Armstrong spent more than 800 hours working on this matter and was actually on trial from June 23 through August 14. It was not until the latter part of September that final briefs, totalling more than 900 pages, were submitted to the referee and not until October 27 -- after two hearings before the Court on the Judiciary -- that a final decision was filed.

Upon terminating his duties to the Court on the Judiciary, Mr. Armstrong was faced with a trial date in this matter which had then been set for January 5, 1976. This left little time for him to review the voluminous documents and contact the scores of people involved in this highly complex case which had been the subject of Government investigation for some five years or more. This was severely complicated by the initial inability of King, who is in personal bankruptcy, to come up with the approximately $1,200 demanded by the Government as xeroxing costs in order to obtain the documents which the Court had ordered turned over to us. These documents were not obtained until November 21,

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1975. Since that time, counsel has obtained extensive additional documentation from the Government and third parties.

Moreover, King's financial situation has precluded the devotion of the kind of resources that would be necessary to expend in order to staff this case in the same fashion as a complex civil case between substantial parties.

In January 1976, after a two week extension of the trial date at the request of the defendants, the trial was adjourned again until a date to be fixed in April or May as an accommodation to the Court.

This four month period has been spent reviewing massive documentation, meeting with numerous people with knowledge of the transactions in question and otherwise preparing for the upcoming trial. As of April 30, 1976, counsel for King had devoted in excess of 1,000 hours to this case. Trial preparation has been significantly hampered, however, by a number of factors. First, both defendants, as well as the preponderance of potential witnesses, other knowledgeable people and the documents relevant to this case are located in places other than New York -- particularly in Denver, where King Resources Company had its principal place of business and its Trustee is presently located. As a result, we have been compelled to make five trips to Denver, varying from four to ten days in length, and additional

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trips to Houston, Fort W[illegible]., Chicago, Mobile, Calgary and Victoria, British Columbia. Indeed, had we adequate funds available, we would have travelled far more extensively.

Second, our client has been involved, throughout this period, in a multitude of civil litigations involving both himself individually and corporate entities with which he was associated, mostly in and around Denver. This made it impossible for him to devote anywhere near his full attention to this case or make himself available to us. Consequently, between January and the end of April, King was able to come to New York on only two occasions -- July 13-14 and April 22-30. In addition, we had to devote significant amounts of time to certain of these civil litigations for such things as seeking stays and orders quashing depositions. Moreover, and due to our concern over possible conflicts between the two defendants, we felt obliged to deny ourselves access to defendant Boucher until he had retained trial counsel -- which was achieved only within the past month.

Third, we have been dealing with what can only be characterized as a constantly shifting and expanding view of this case by the Government. Since serving its original Bill of Particulars on July 9, 1975, the Government has served four Supplemental Bills of Particulars on August 29, 1975, December 12, 1975, December 19, 1975 and May 3, 1976.

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During this time, the Government has informed us that they intend to introduce evidence at trial regarding certain alleged "similar acts of misconduct", each a highly complex transaction in its own right, as well as hundreds of transactions over the years between King Resources Company and Fund of Funds. Even with the trial date extended into May, the defendants have had little chance to examine these transactions in any depth.

In short, the bringing of the instant motions does not constitute gamesmanship on the part of the defendants, but rather represents a legitimate and, in light of the facts of this case, reasonable attempt to have certain significant issues resolved prior to trial. Curiously, while the Government appears to imply that the defendants have made their motions for the purpose of delaying this trial, they have ascribed no reason for such an implied motive. Indeed, there is none. The defendants are anxious to have this case resolved and thereby rid themselves of the extraordinary hardships, both financial and otherwise, which it has inflicted upon them.

Finally, it should be noted that even if King's motion as originally mad was a late motion, the Government has, in response to the motion, released new information indicating taint after the indictment but prior to the trial. It seems clear that King, not knowing this aspect of the taint, could not have made an earlier motion regarding such particulars prior to the time.

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POINT II

THE GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION IS INADEQUATE AND RAISES NEW GROUNDS FOR GRANTING THE MOTION

Defendant King's motion is predicated upon the fact that (1) he testified in 1971 and 1973 in his own bankruptcy proceedings and received full use and derivative use immunity for that testimony; (2) that in his bankruptcy proceedings he testified about matters which are part of the Government's evidence in the criminal case against him; and (3) that the Government's evidence is tainted since it was derived "directly or indirectly" from leads resulted from the immunized testimony.

The Government takes little or no issue with the first two of these contentions. It makes no effort to rebut the fact that King's testimony was given under immunity.* Nor does the Government contest in any meaningful way the obvious overlap between King's bankruptcy testimony and the evidence which the Government has announced it intends to introduce in this case. In his affidavit, Mr. Wing simply states that "many" of the references included in

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* In a footnote on page 12 of the Government's Memorandum of Law the prosecutor notes that it is "arguable" that a defendant must assert his privilege against self-incrimination and affirmatively invoke Section 7a(10) of the Bankruptcy Act before he receives immunity. The Government does not, in fact, argue the point.

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the extensive digest of the bankruptcy testimony offered in the moving papers are "totally unrelated to the instant case". (Wing aff't p. 4). Mr. Wing makes no effort to specify the items to which he refers and, in any event, apparently concedes that there are many other references which are relevant to his proof.

Thus, the only question in issue is whether the admittedly immunized and admittedly relevant testimony served as a "direct or indirect" source for any of the prosecutor's evidence or for any leads resulting in such evidence. More broadly, it is the Government's burden, under the authorities previously cited in King's memorandum of law, to demonstrate that King's testimony was not used in any way by the prosecution or by anyone from whom the prosecution derived its evidence. It is respectfully submitted that the Government has utterly failed in meeting this burden.

In fact, the Government has revealed in its papers new evidence of taint to which the defendant must now address himself.

A. Evidence Newly Disclosed by the United States Attorney.

The Government has disclosed yesterday, in its answering papers, that it has in its possession a digest of King's bankruptcy testimony given on August 11, 1971 and a number of press clippings reporting in detail his testimony

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at various sessions of the first meeting of creditors in 1971. In addition, last night the Government turned over another set of documents relating to the defendant's bankruptcy.

Whatever arguments may be made with respect to the delay in defendant King's making his motion with respect to his bankruptcy testimony, that argument cannot apply to an application directed at this material. These items, particularly the digest of King's bankruptcy testimony, should have been turned over to the ~~Government~~ defense in the summer of 1975 as part of the Government's discovery. No motion could be made with respect to such items until they were disclosed. Consequently, the defendants contentions in this regard represent an entirely new motion made at the earliest time possible in response to discovery which is more than ten months late.

Apparently feeling that the best defense is a good offense, the Government takes the position that it is the defendant's fault that the Government did not adequately review its files in order to comply with its obligations and that the defendants should be penalized because they did not earlier bring a motion which caused the Government to discover its delinquency.

The Government's revelations highlight the basic problem with the Government's contention that it can control the dissemination of information from an immunized proceeding

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when proper controls are not instituted at the source. There are a number of steps that the United States Attorney and the bankruptcy referee could have taken in 1971 in response to the recently promulgated Department of Justice memorandum warning of the problems raised by the amended bankruptcy immunity statute. Such steps would have been particularly called for in the light at the intense local interest in King's bankruptcy proceedings. Aside from the specific procedures outlined in the Department of Justice Memorandum, attendance could have been limited to those with a legitimate interest in the bankruptcy, those present could have been specifically informed of the particular need to maintain the information they received in confidence, the transcripts could have been sealed (as is not uncommon in bankruptcy proceedings where security is an issue), the press might have been excluded from the proceeding, and effective control could have been exercised over access to transcripts.

Instead, what occurred was a circus. Apparently no attempt was made to take any steps to see to it that King's testimony was protected nd, as a result, the courtroom overflowed with people who were intrigued by the latest page one story about an individual who was at that time one of Denver's most prominent -and troubled- citizens.

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(1) Digest of King's Testimony

One of the people quite properly in attendance was apparently Harry Sterling, counsel for the creditors' committee -- and he took notes.* Mr. Sterling's notes are obviously not complete. Assuming that the numbers in the left margin represent items noted by Mr. Sterling, the first one is number 78, indicating that there are 77 other items which were noted by Mr. Sterling but which the Government either does not have in its possession or has not yet found. In addition, although the first four pages are cut off too close to the text to reveal a page number, the fifth and sixth pages are numbered 25 and 26, respectively, indicating the existence of 20 pages of notes prior to those turned over by the Government. Since the ninth item (number 87 referring to a Robert Rath (sic) note) obviously relates to material on pages 13 and 14 of the

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* It is apparent that the document made available by the Government is not, as the Government suggests, a digest taken from a written transcript but rather notes taken by Mr. Sterling at the time he was present. The numbers preceding each paragraph are not page references since they do not match the pagination of the transcript in question (which was only 67 pages long). Moreover, statements like "nothing said aloud about subject matter" (Par. 4 on page numbered 26) and the fact that there are notes for a session on August 13, 1971 for which there apparently is no transcript indicates that there were notes taken in person at the time of the hearing.

transcript (see defendant King's moving affidavit at p. 7)* it is apparent that the notes begin at or near the opening of the August 11, 1971 session and the previous 77 items, covering 20 pages of notes, refer to the prior sessions on June 30 and July 2, 1971.

We do not know whether Mr. von Stein, the SEC attorney who discovered the document in an IOS file in France, saw the rest of the digest when he examined the files in June of 1975, and apparently he doesn't either. In his affidavit he obviously is reconstructing his recollection by reference to the document. He states that he does not recall reading it "although it is likely that I did in July 1975 when the documents were sent to me" (von Stein aff't, p. 2). There is little reason to believe that Mr. von Stein did not see the whole document and, in the light of the obvious confusion that characterizes the Government's files in this case, there is no certainty that he did not order the entire digest.

In the light of the prosecutor's expressed interest in discovering testimony by Mr. King, it is curious that after Mr. von Stein read a document of this sort he not only restrained from following it up, but he forgot it entirely.

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* Counsel can only compare the digest with the summary of relevant material in our previous affidavit since the transcript has been submitted to the Court.

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His forbearance could not have been the result of a desire to protect himself from possible taint since he ordered the document sent from France to the United States Attorney's Office. Indeed, his action in ordering this document indicates a total unawareness on Mr. von Stein's part of the problems with immunized bankruptcy testimony which the Government contends we carefully drilled into all SEC investigators working on this case. Even though the heading on the portion of the digest which has been made available by the Government indicates clearly that the document relates to King's testimony in a bankruptcy proceeding, Mr. von Stein saw fit to have it sent to New York.

Mr. von Stein, and the Government, apparently feel that it is sufficient answer to any question of taint for him to say that he (for some reason) never read the document after receiving it from Europe, took no notes of it and did not digest it.

The digest wound up in a file in Mr. Wing's possession labeled "King Personal" which Mr. Wing himself says was used actively in this litigation. The fact that Mr. Wing had placed this document in a file "used to collect information relevant to cross-examination and various allegations put forth in King's motion papers" and his candid admission that "there is a greater chance that

I may have read this particular document although I have no recollection of it" places upon the Government the burden of proving that this document was not used for purposes of precisely the kind referred to in U.S. v. McDaniels, 482 F.2d 305 (8th Cir. 1973).

Although purporting to have little or no memory of the document or its content, Mr. von Stein states authoritatively "I do know that I did not speak to any new witness(es) or initiate any new lines of inquiry or investigation as a result of reading (the digest)." It is preposterous for an investigator to purport to be able to make such a statement. As the McDaniel case points out, once knowledge of such a document and its contents are in his mind, that knowledge can be used in a hundred ways.

There is also no indication from the Government as to how the digest got into the IOS files and whether other documents from the same source, similarly tainted, were exposed to Mr. von Stein's view.

In short, the Government's position with respect to this digest flatly ignores the law with respect to the use of immunized material, as set forth in defendant's original memorandum of law. It makes no difference whether the government attorney uses the particular document. The question is whether he or the individuals from whom he derives his information are exposed to it, read it, and then use it in any way. Kastigar v. United States, 406 U.S. 441 (1972).

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Mr. von Stein admittedly read the document and Mr. Wing says that he probably did. In addition, Mr. von Stein may very well have been exposed to the rest of what appears to be an extensive digest and may have been exposed to other materials coming from the same source.

The Government, without benefit of legal authority, attempts to find comfort in the contention that the digest was not found until after the indictment was returned. This allegation has no bearing since the information obtained in the digest could have been used in any number of ways. It is disingenuous for the Government to pretend that their investigation had come to an end by the time the document was allegedly discovered. Mr. von Stein himself has been busily interviewing witnesses and collecting documents as recently as a few weeks ago, travelling all over the country to do so. The theory of the Government's case has expanded dramatically since the indictment was returned and the most recent supplemental bill of particulars giving additional factual particulars of the indictment was not served until May 3, 1976. Defense counsel have recently talked to witnesses to whom the Government had spoken for the first time only a montn ago.

The Government cites no authority in support of its interesting theory that a prosecutor's obligations to insulate himself from taint ends with the returning of an indictment and the clear language of the cases cited in

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defendant King's memorandum of law make it apparent that the law is to the contrary.

(2) News clippings

The Government has also turned over six clippings from the Rocky Mountain News on the subject of King's testimony in 1971. These articles are under banner headlines and refer in detail to a number of matters of direct relevance to the proof in this case.*

Mr. von Stein states that he found these clippings "while looking through the Denver IRS offices clipping file" (von Stein aff't p. 7). The most interesting question with respect to von Stein's statement is, what was he doing there? Mr. Kelly of the IRS states in his affidavit, submitted by the Government, that IRS personnel carefully insulated themselves from SEC investigators and did not give them information from their files. Yet Mr. von Stein, in September or October 1975 is apparently going through those very files.

The prosecutor (in Mr. Vizcarrondo's affidavit at p. 4) acknowledges that "certain documents" were obtained

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* It is perhaps significant to note that there is a checkmark in the margin of an article headlined "IRS Restrained by Referee" opposite a reference to a statement by King as to his prediction of the chance of success for two wells being drilled on a property in the Arctic which was part of the acreage with which this case is directly concerned.

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from Mr. Moats of the IRS in September or October 1975 and Moats is quoted as stating that none of the documents that were obtained, with the possible exception of the folder containing the news articles, was obtained by the IRS as a result of King's testimony in his bankruptcy. Neither Mr. Vizcarrondo nor Mr. von Stein nor Nr. Moats (who has not yet filed an affidavit) makes any statement as to what documents were seen by Mr. von Stein but not ordered.

Again, Mr. von Stein states that he read the clippings but did not take notes nor digest nor classify them and has never read them since. Nevertheless, he took the trouble to order them for the files of the United States Attorney. He repeats, again, his flat recollection that he did not contact any witnesses or open any new lines of inquiry as a result of reading the documents.* Again, Mr. von Stein's alleged failure to follow up on this information cannot be ascribed to sensitivity about immunity problems since he admits to having read the items in the first place and ordering them for his files in New York.

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* The need for skepticism in evaluating Mr. von Stein's protestations about his lack of interest in these items is most dramatically brought home with respect to his representations regarding Boucher's testimony. It is absolutely absurd that an SEC investigator would have come across testimony by one of the defendants which, as Mr. Boucher's papers demonstrate, relates directly and at considerable length to the very issues of this case, and have no particular interest in it.

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These news articles are relevant not only for themselves but for what they say about the climate in which Mr. King's bankruptcy proceedings were held. The news coverage was enormous and it would be difficult to find anyone in Denver who was not exposed to King's testimony through the detailed accounts of it appearing in the press. The effectiveness of any admonitions allegedly made by government supervisors that their investigators must remain away from such information must be judged in the light of Mr. von Stein's apparent ignorance of such an admonition.

Thus, the Government has raised, by commendably candid disclosure, two entirely new sources of taint. Mr. King has not, in one day, had the opportunity to investigate all of the factual and legal ramifications of the new material but it seems to infect the Government's case in a most direct way. In any event, it is abundantly clear that the implication of taint cannot be brushed aside without a hearing.

Last evening the Government made available certain documents, which include the Section 167 Report prepared by the Trustee of King Resources Company, dated October 10, 1973. These documents were not supplied to the defendants until a specific request for the Section 167 Report was made by counsel for defendant Boucher. A brief review of these documents, which is all that is possible at this late date,

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reveals that they are highly relevant to the motions at hand. The 167 Report details at length, among other things, the sale of Arctic Permits to COG, Mecom, Lakeshore Associates and King, as well as the subsequent revaluation of Fund of Funds assets based on that sale. This report also has sections which detail the Government's alleged similar acts of misconduct - the Colorado Corporation's sale of NOPI and the Lark Oil transaction.

With respect to the other documents just supplied, the Trustee's Application No. 65 details the relationship between KRC, IOS and FOF and goes on to describe, at great length, the sale of Arctic Permits on which this case is based and the subsequent revaluation of FOF assets. The Advisory Report of the SEC on the Plan of Reorganization also notes the sale of Arctic Permits and the subsequent revaluation of FOF's interest. More significant, however, is the fact that this report actually questions the propriety of the Arctic transaction. The additional documents submitted by the Government relate to the initial stages of King's bankruptcy proceedings, particularly his first Meeting of Creditors.

Counsel for the defendants have recently been advised that John S. Pfeiffer, counsel to the Trustee of KRC, was present during King's testimony at his first Meeting of Creditors and further investigation is needed

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in order to determine whether any taint with respect to King exists in these latest documents. It is clear that the documents raise substantial questions about the manner in which the present indictment is based.

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B. The Government's Response to Matters Raised in Defendant's Motion.

Aside from the new matter disclosed by the Government which, in effect, gives rise to a new motion, the Government's response to those matters already raised is entirely inadequate to meet the burden set forth in the cases cited by the defendant.

The most glaring gap in the Government's presentation is the inadequacy of the affidavit submitted by Mr. von Stein. He states that, in July 1973, he was assigned to investigate "relationships and transactions" between King Resources Company ("KRC") and Investors Overseas Services, Ltd. ("IOS") and Fund of Funds Limited ("FOF"). He makes no response whatever to the defendant's allegations that, in the course of his investigation, he worked closely with the Denver United States Attorney's Office in its investigation into Mr. King. Nor does he deny his dominant role in collecting the evidence and witnesses leading to this indictment. The Government is apparently conceding, therefore, that von Stein has worked closely enough with those involved in the Denver investigation so that any taint affecting that investigation also affects him, and that he has worked closely enough with the

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prosecutors in this case so that if he had been exposed to tainted evidence, the taint infects them.

Mr. von Stein carefully limits the extent of the representations made in his affidavit, stating"

> "I shall describe in this affidavit the nature of those documents which ever were or are now in the files of the United States Attorney's Office for the Southern District of New York which arguably describe testimony in the various KRC or John M. King bankruptcy or reorganization hearings in Denver and how and when they came to my attention". (von Stein aff't, p. 2)

This limitation is at best incomplete. The whole thrust of the defendant's motion, amply supported by authority, is that von Stein was exposed to tainted information and used that information to obtain leads which assisted him in gathering evidence against King. But von Stein says nothing about his contacts with various people who in turn may have been exposed to the bankruptcy testimony. He says nothing about his exposure to documents which are <u>not</u> presently in the United States Attorney's files but which may have afforded him valuable information. He says nothing about documents which may at one time have been in his SEC file but which were not transmitted to the United States Attorney's Office. Indeed, he does not even deny reading the bankruptcy testimony itself. He limits his remarks

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to documents held in the United States Attorney's Office, which were discovered in a review of files supervised by Mr. Wing in response to defendant's motion. As mentioned above, he refers in passing, and without explanation, to the fact that he "look[ed] through" the files of the Internal Revenue Service in Denver (despite the affidavits from IRS personnel stating that they did not make their files available to the SEC). (von Stein aff't, p. 2)

If the Court is ever to be sure that Mr. von Stein, in the course of an investigation which the Government has previously described as lasting many months and involving more than 80 witnesses and thousands of documents, was never exposed to the bankruptcy testimony or evidence which he knew was derived from it, Mr. von Stein must be forced at the very least to make a statement to that effect. Moreover, it is not necessary for Mr. von Stein to have been aware of exposure to tainted material for him to have been infected, and the Government has not begun to meet its burden of proof with respect to this motion until Mr. von Stein has explained fully -- and under cross-examination -- all of his contacts with individuals or documents possibly bearing a taint.

With respect to the four separate areas specifically addressed in King's moving papers, the Government has not yet submitted affidavits covering three of them.

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No affidavits whatever have been submitted with respect to the possible taint arising from the presence at the first meeting of creditors of lawyers from the Donovan Leisure and Holme Roberts law firms.

On the subject of possible taint arising from Justice Department and IRS personnel who were present during the bankruptcy testimony, the Government has not yet filed affidavits from several of them, including Mr. Silverstein, who was continuously present at the first meeting of creditors in 1971 on behalf of the Justice Department.

Mr. Thomas H. Boerschinger, the Department of Justice tax lawyer assigned to the 1973 hearings, states that he was informed by his predecessor, Mr. Silverstein, of the problems connected with bankruptcy testimony immunity. Mr. Boerschinger's statement contains no flat assertion that he kept to himself the information he derived from King's testimony. He speaks in terms of a policy which covers "making any communication * * * to any federal agency". He then states that "so far as I have knowledge", the policy was followed "by everyone involved in the tax case." This statement has a formal ring. It

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conceivably leaves room for casual contacts, responses to inquiries and conversations with individuals working for agencies as opposed to "agencies" themselves. Defendants now have information which indicates that such contacts actually occurred.

Mr. Boerschinger relates the substance of one conversation with Mr. von Stein but (Boerschinger aff't, p. 2) does not state that this was his only contact and gives no details about his relationship with von Stein.

Throughout his affidavit Mr. Boerschinger necessarily qualifies his statements with phrases such as "as best as I can recall" and "so far as I have knowledge". This circumspection highlights the problems involved in making definitive statements as to events occurring several years ago involving associates for whom one cannot speak.

The affidavit of William P. McGovern, an IRS agent who was present at the proceedings in 1973, is, perhaps inadvertently, incomplete. He states that the information "gained by me" has not been "communicated by me" to any SEC or Justice Department attorney other than those in the Tax Division. There is no discussion of the dissemination of his information to others in his office who might in turn have come in contact with SEC or Justice Department

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personnel. Moreover, Mr. McGovern states that he was told by Mr. Kelly of the SEC that he should not divulge Mr. King's testimony "after bankruptcy proceedings were begun" and it would be relevant to inquire how long after the beginning of the proceedings this admonition was given. It is worth nothing that Mr. McGovern states that he was present on two occasions (June 7 and 14, 1973) when the transcript fails to reflect his attendance. This points up the fact that many people, including those working for the Government, attended without any record being made of their attendance.

The affidavit of John J. Kelly of the Denver office of the SEC reflects a commendable awareness of the necessity for insulating SEC investigations from bankruptcy proceedings. However, the memorandum, sent to all personnel in the Denver and Salt Lake offices of the SEC, was not distributed until June 30, 1971, the very date upon which King testified for the first time. All Mr. Kelly's affidavit does is indicate that a memorandum was prepared and distributed to SEC employees and that this memorandum contained the following admonition:

> ". . . each employee who is obtaining information from any person about John King should inquire as to whether or not the other party gained any knowledge from Mr. King's bankruptcy testimony.

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If the other party gained any such knowledge, then you are not to discuss Mr. King in any way with that party."

It is difficult to believe that every time an SEC employee questioned anyone that they actually went through the formality of making such an inquiry. It would be more convincing if Mr. Kelly, or someone else from the SEC office, could give an example of a witness whose interview was terminated after such an inquiry was made. Since the bankruptcy proceedings were fully covered in headline stories in the press, it would seem that few people to whom the investigators could have talked would not have been exposed to the testimony.

It would be interesting, for instance, if the Government examined the transcripts in its possession of hearings held by Mr. Kelly, to determine whether he himself followed the procedure outlined in the memorandum he drafted. In any event, the procedure as outlined in the memorandum is inadequate. The warning that was to be given by an SEC investigator would most logically be interpreted as inquiring only as to whether the individual being questioned had actually been exposed to the bankruptcy proceedings themselves. The only way to assure with certainty that there was no taint would be to make a much more complete inquiry as to whether,

for instance, the prospective witness had read about the proceedings in the very complete reports that were being printed in the daily newspapers or had spoken about the bankruptcy proceedings with others who were there.

Carolyn J. McNeill was an Assistant United States Attorney in the Denver office and was present at sessions of both the 1971 and 1973 hearings. She makes a representation that she has never discussed the information derived from those meetings with any attorney in the Criminal Division in the United States Attorney's office in Denver or the Department of Justice, or with any representative of the SEC. The defendant should be entitled to test her recollection by cross-examining her with respect to such matters as: the substance of the conversation referred to in paragraph 8 of her affidavit; the reason for her certainty as to the representation made in paragraph 10 (referring to events stretching back to 1971); the reason for the concern expressed in paragraph 11 with respect to her attendance at a session in December of 1975; her understanding of the meaning of the statement by the Securities and Exchange Commission that they had no opposition to her attending King's bankruptcy sessions; her conversations with others who might in turn have associated with those connected

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with the United States Attorney's office investigation (she does not represent that she only discussed the bankruptcy testimony with others working on the tax case).*

The documents affixed to the affidavit of Carolyn McNeill make it clear that the United States Attorney was very much aware of the bankruptcy proceeding and yet he took no steps, in accordance with the Department of Justice memorandum, to see to it that the bankruptcy referee instituted procedures which would comply with the memorandum and would insulate Mr. King's testimony from possibly tainting the criminal investigation. Ms. McNeill makes no statement as to whether she was instructed by the U.S. Attorney to discuss this problem with the Referee and whether she did so.

The Government has not yet filed all of the affidavits which, in its judgment, are necessary for a

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* Mr. Vizcarrondo (but not Ms. McNeill) states in his affidavit that the civil division in the United States Attorney's Office in Denver was on a different floor from the criminal division in the early 1970s and today is in a different building. Defense counsel has been informed, by a former member of the Denver United States Attorney's office, that in 1973, when Ms. McNeill was working in the office, that he was a member of the criminal division and occupied the office next to her. As the Court says, the civil division was later moved to a different building.

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determination of this motion. Those it has filed answer some of the questions raised by King's motion but leave others unanswered. One thing is clear. At this state of the record, the Government can by no stretch of reasoning be said to have carried the burden placed upon it by the Supreme Court.

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POINT III

AT THE VERY LEAST, A HEARING SHOULD BE HELD ON THE POSSIBILITY OF TAINT PRIOR TO TRIAL

Assuming, arguendo, that this Court determines that the indictment should not be dismissed at this time, a hearing must be held to determine whether and to what extent the evidence which the Government intends to introduce at trial has been tainted. As a general rule, a defendant is entitled to an auxiliary hearing once he has shown that he has testified under immunity concerning the same subject matter as the impending criminal trial. This is founded in the heavy burden placed upon the Government to establish independent sources, which intensifies the need to hold evidentiary hearings to resolve this constitutional issue. See United States v. Kastigar, 406 U.S. 441, 461-62 (1972); Murphy v. Waterfront Comm'n, 378 U.S. 52, 79 n. 18 (1964). The Supreme Court stated in these decisions that a defendant need only show that he has testified under immunity for this burden to arise.

King's request for a pretrial hearing is consistent with Rule 12(e), which provides that:

> "[a] motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict . . . .

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> Where factual issues are involved in determining a motion the court shall state its essential findings on the record." (emphasis added).

The historical note to Rule 12(e) makes clear that the words "for good cause" were intended, inter alia, to discourage the tendency, of which Congress had become cognizant, for courts to reserve rulings on pretrial motions until after verdict in the hope that the verdict would make a ruling unnecessary. In light of such Congressional intent, a deferral of the hearing until after trial is unwarranted.

While the Government argues that any taint hearing should be held after trial, two of the cases cited in support of its contention support a contrary conclusion. In United States v. First Western State Bank, 491 F.2d 780 (8th Cir.), cert. denied, sub. nom. Thompson v. United States, 419 U.S. 825 (1974), the appellate court reversed the district court's order to suppress certain testimony and evidence relating thereto. In that case, however, the district court had held an extensive pretrial evidentiary hearing and the reversal and remand was based upon the appellate court's view that the lower court had not given sufficient weight to certain facts developed at the hearing. In so ruling the Eighth Circuit approved the view that the Government's burden of

proving independent ırces of evidence should "under ordinary circumstances" be shouldered during a pretrial evidentiary hearing.

The First Western case indicates that where, as in this case, there is substantial evidence of overlapping investigations, a pretrial hearing is mandated. On the other hand, where there are isolated questions concerning suppression of particular evidence, a full-scale suppression hearing on all evidence that is to be offered by the Government would not be appropriate. Id. at 787. In view of the evidence in this case of substantial taint on numerous subject matters which are likely to be raised at trial, it would appear that First Western supports the view that a pretrial hearing on this motion is the procedure that should be followed.

Another of the cases cited by the Government on this point, United States v. Bianco, Docket No. 75-1244 (2d Cir., April 8, 1976), also involved an instance in which the district court had held a pretrial hearing on the question of taint. The remaining authorities are distinguishable.

United States v. Nolan, 420 F.2d 552, 553-54 (5th Cir. 1969), cert. denied, 400 U.S. 819 (1970) and United States v. Birrell, 269 F. Supp. 716, 725-28 (S.D.N . 1967), were both decided prior to Kastigar and involved 4th Amendment

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issues which, it appeared, could only be resolved after extensive hearings. In Nolan, the possible use of 90 hours of tapes was at issue, while Birrell involved millions of documents of the defendant to which he had been given access but which he had refused to review. Given the fact, as the Second Circuit has recently stated in United States v. Kurzer, Docket No. 75-1437 (2d Cir. April 14, 1976), that 5th Amendments cases establish a more exacting standard for the Government on the taint issue, it is understandable that the courts in those cases opted for a post-trial hearing.

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The usefulness of a pretiral hearing is graphically demonstrated by the Bianco* case, where evidence of a possible linkage between the prosecution and the immunized testimony was not developed until the pretrial hearing and had been unknown to the defendant before the hearing had been instituted, and United States v. Mitchell, 384 F. Supp. 561 (D.C. Cir. 1964). In the latter case, it appears that after a pretrial hearing the special

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* The Government's attempt to rely on Bianco is misplaced. In that case, the prosecutor did not have access to the testimony until the motion to dismiss was made and no objection to such access was made until the case was on appeal. In our case, King contends that the Government had access to the immunized testimony, or fruits thereof, during its investigation.

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United States v. Boyd, 404 F. Supp. 413 (S.D.N.Y. 1975), aff'd without opinion, Docket No. 75-1393 (April 15, 1976), was a multi-defendant conspiracy case in which one of the defendants raised an immunity issue with respect to certain bankruptcy testimony. The objecting defendant was able to obtain, prior to trial or at trial, testimony relating to him before the grand jury. In addition, the Court reviewed in camera all grand jury minutes and found that they revealed "unequivocally" that no reference was made to and no direct or derivative use was made of the sheltered testimony. The defendant was unable to point out to the Court any evidence introduced at the trial which might not have been derived from independent and legitimate sources. These facts are in sharp contrast to our case, wherein, as discussed above, there are numerous possibilities that substantial taint has occurred.

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prosecutor decided to drop the case. In our proceeding, we have witnessed an almost uninterrupted trickling from the prosecutor's office to the court of possibly tainted evidence, some of which has raised the spectre of new sources of taint which counsel had not even considered prior to making the motion.

In cases such as the Birrell case, supra, where the trial lasted three or four weeks and the hearing involved at least three months of testimony stretching over several years, it might make sense to postpone the hearing until after trial.* Here, the reverse is true - the trial will certainly be extremely lengthy and the hearing need only last a short time.

The Government, in arguing against defendant Boucher's motion for severence, emphasized the length and complexity of the trial, estimating that it will last five weeks. Government estimates have a way of being conservative (one case estimated to last six to eight weeks,

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* Arthur Limon, Esq. the chief prosecutor on the Birrell case has stated, in a conversation with defense counsel, that in fact the procedure adopted in the Birrell case turned out to be a "disaster" from the Government's point of view because it proved to be incredibly cumbersome and unworkable.

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consumed 5 1/2 months) and defendants believe the case will be longer than the Government anticipates. In any event, it is agreed that the trial will be lengthy by any standards.

Such a trial is an incredible burden for these defendants, who have families in Denver whom they must attend to and support. King, who has been divorced during the last year, has custody of three teenage children who must go without supervision during his trial. In addition, King's severe financial problems, and the multiplicity of Denver-based lawsuits with which he must contend, make an extended absence from Denver potentially ruinous. If this case can possibly be disposed of or ~~eliminated~~ limited* as a result of a short hearing, it would be grossly unfair to find that fact out after subjecting King to a trial which has this kind of an effect upon his life.

The Government argues that the hearing will be lengthy. It need not be. Defendant King suggests the following procedure as meeting the needs of the Court as well as protecting the rights of the defendants:

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* At a pretrial hearing the Court could determine whether the proffered evidence of "similar acts" is tainted. Such a determination before trial might well protect against otherwise reversable error.

(1) The Court should receive the remaining affidavits to be submitted by the Government and decide whether they are adequate to meet the Government's burden (as set forth above, King contends that this burden cannot be met by affidavits alone).

(2) If the Government's submission is deemed to be inadequate, the Court should order a hearing to explore the issues raised by the affidavits. This hearing would only go into the Government's allegation of lack of taint and would not last more than one week.

(3) On the basis of this hearing the Court could decide if a full Kastiger hearing is necessary and, if so, held before or after trial.

Defendant respectfully suggests that, if a hearing is deemed necessary, the suggested procedure is appropriate and fair.

CONCLUSION

For the reasons set forth on the papers herein, defendant's motion should be granted.

Respectfully submitted,

BARRETT SMITH SCHAPIRO & SIMON
Attorneys for Defendant,
John M. King
26 Broadway
New York, New York 10004
(212) 422-8180

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JRW:dl

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rec'd Friday

UNITED STATES OF AMERICA,

- v -

JOHN M. KING and
A. ROWLAND BOUCHER,

Defendants.

AFFIDAVIT

75 Cr. 70 (MEF)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMSON VON STEIN, being duly sworn, deposes and says:

1. I am an Attorney employed by the Securities and Exchange Commission ("SEC") in Washington, D.C. I have been assigned to assist John R. Wing, Chief of the Fraud Unit, United States Attorney's Office for the above-captioned matter.

2. This affidavit is submitted in opposition to the motions filed by each defendant to dismiss the indictment as having been obtained on the basis of evidence discovered as a result of each defendant's testimony in bankruptcy proceedings.

3. In July, 1973, I began to investigate the relationships and transactions between King Resources Co. ("KRC") of Denver, Colorado and IOS, Ltd. ("IOS") and Fund of Funds, Ltd. ("FOF").

4. As a result of my investigation, the SEC referred its files to the United States Attorney's Office for the Southern District of New York for possible criminal action. I was assigned at that time to assist the U.S. Attorney's Office and have done so since then.

Exhibit D

JRW:dl

5. On May 19, 1976, Mr. Wing submitted to the Court documents that were found in the Government's files an that in some fashion relate to the KRC or John M. King bankruptcy and/or reorganization proceedings. I obtained these documents in the course of investigating this case, and I will describe in this affidavit how and when, to the best of my memory I obtained them.

6. I may have seen a copy of the Trustee's Section 167 Report, dated October 1973, in 1973, although I have no specific memory of doing so. The only copy of that report in the prosecution's file is marked as coming from IOS's offices in Ferney Voltaire, France, which leads me to believe that I obtained it in June or July 1975, when I first examined the IOS files in Ferney Voltaire.

7. Regardless of when I obtained the report, it could not have "tainted" in any way the Government's investigation of this case as John Pfeiffer, counsel to the Trustee for KRC and the author of the section 167 Report, informed me yesterday that he did not discover or uncover anything that he put into the report from his section 167 examination of defendant Boucher. Mr. Pfeiffer also informed me that he had previously told that same fact to the attorneys for the defendants. Mr. Pfeiffer further stated that he did not take the testimony of defendant King in the KRC bankruptcy proceedings.

JRW:dl

8. I obtained the SEC's advisory report on the KRC reorganization plan, which was filed with the Court in August 1975, from the Chicago Office of the SEC in the fall of 1975. The author of the advisory report, James Erichstadt of the Chicago SEC Office, informed me that he did not review testimony of defendants King or Boucher in preparing the report, nor did he ever have transcripts of such testimony in his possession.

9. "Trustee's Application 65" was filed in February 1973, five months before Boucher's August 1973 deposition by the trustee's attorney. I receivedit sometime 1973, although I do not specifically remember where I received it.

10. I do not remember where or when I received the notices to and statements by John King's creditors, and the statement by King to his creditors. I do not believe that they pertain to King's bankruptcy testimony.

11. Dennis Waldeck of the Chicago Regional Office of the SEC was present in 1971 at a hearing in Dallas, Texas, on the question of whether to transfer the KPC bankruptcy proceedings from Dallas to Denver. The SEC is, by statute, a party to all corporate bankruptcies, and Waldeck appeared on behalf of the SEC. Waldeck informed me yesterday that he recalls speaking to the presiding judge about the immunity problem, as the Organized Crime Control Act had recently been enacted. The Chicago SEC office did not obtain a copy of the transcript, and Waldeck did not at any time inform anyone in the SEC's Denver Regional Office or the Division of Enforcement of the SEC of any of the contents of Boucher's testimony at the bankruptcy hearings.

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JAW:dl

12. Mr. Waldeck also told me that he worked with the SEC Denver Regional Office on the memorandum on insulating enforcement personnel from possibly immunized testimony, previously submitted to this Court with the affidavit of John J. Kelly, Jr. Mr. Waldeck states he did not participate in writing the SEC's August 1975 advisory report on the KRC Reorganization.

TVS

THOMSON VON STEIN

Sworn to before me this

day of May, 1976

NOTARY PUBLIC

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UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO

UNITED STATES OF AMERICA	)
	)
v.	)
	)
JOHN McCANDISH KING	)
	)

AFFIDAVIT

MORRIS SILVERSTEIN, being duly sworn, deposes and says:

1. That I am a citizen of the United States residing at 4545 MacArthur Boulevard, Washington, D.C.

2. That I am presently a Trial Attorney in the Fraud Section, Criminal Division, United States Department of Justice, Washington, D.C.

3. That from May, 1968 through June, 1972, I was a Trial Attorney with the General Litigation Section, Tax Division, United States Department of Justice, Washington, D.C.

4. That in this position, I was responsible for representing the Internal Revenue Service in the bankruptcy proceeding entitled In Re John McCandish King which was filed in United States District Court, Denver, Colorado in June, 1971.

5. That I was present at the testimony given by John McCandish King in that proceeding during the summer of 1971 and did personally cross-examine Mr. King.

6. That at that time I was aware of the provisions of the Bankruptcy Act which allegedly gives a witness immunity from having his testimony (or leads developed therefrom) used against him in criminal proceedings.

7. That I never communicated any information regarding the substance of Mr. King's testimony to anyone in the Criminal Division, United States Department of Justice or the

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Securities and Exchange Commission.

8. That my only communication with anyone regarding Mr. King's testimony was with attorneys in the General Litigation Section, Tax Division, United States Department of Justice; attorney and agents of the Internal Revenue Service who were involved in the dispute regarding the civil tax issue between the government and Mr. King.

MORRIS SILVERSTEIN
Attorney
Department of Justice

Sworn and subscribed before me
this 17th day of May 1976.

GIVEN UNTO MY HAND AND SEAL OF OFFICE this 17th day of May, 1976.

Notary Public in and for the
District of Columbia

My Commission Expires August 14, 1979

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -against- JOHN M. KING and A. ROWLAND BOUCHER, Defendants.	:	75 Cr. 70 MEMORANDUM

FRANKEL, D.J.

In motions that are extravagantly tardy, defendants moved, short days before trial, for dismissal of the indictment against them, or, alternatively, for a hearing, on the ground that each of them had received use immunity under § 7(a)(10) of the Bankruptcy Act, 11 U.S.C. § 25(a)(10), and that the prosecution has used evidence in obtaining the indictment as a result of this testimony.

As to defendant Boucher, there is a powerful demonstration that his testimony, given on August 6 and 7, 1973, in the bankruptcy proceedings of King Resources Company, pursuant to § 167 of the Bankruptcy Act, was not covered by the protective immunity of § 7(a)(10). United States v. Castellano, 349 F.2d 264, 273-74 (2d Cir. 1965), cert. denied, 383 U.S.

Exhibit E

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928 (1966). Even apart from that, however, there are decisive reasons why the motion for dismissal must be denied and why the trial must not be delayed for the hearing defendants propose as an alternative.

The Government, driven to respond in haste (and properly requesting an adjournment of the trial even to accomplish that much), makes a strong showing, through affidavits, that no one connected with this prosecution had access to or read the transcripts of the bankruptcy testimony; that at most there were a few occasions on which anything at all relating to the testimony (such as an index to one deposition, or newspaper clippings) came into the possession of one or another of the prosecution's staff (and most of these occasions were post-indictment); that no one recalls anything of relevance from these possible scraps; and that no new lines of inquiry were opened, and no evidence discovered, as a result thereof. This showing may well prove to be decisive, United States v. Bianco, Docket No. 75-1244 at 3112 n.10 (2d Cir. April 8, 1976) (reserving the question of whether proof of non-access could alone satisfy the prosecution's Kastigar burden).

Going further, the Government has submitted in camera an affidavit and documents which demonstrate substantial independent and prior sources of its evidence. The court has examined these materials. Cf. United States

v. Boyd, 404 F. Supp. 413, 416 (S.D.N.Y. 1975), aff'd, Docket No. 75-1393 (2d Cir. April 15, 1976). They are substantial. It would be senseless now, on the eve of trial, to require anything more. Whatever might be appropriate had the motion been made, as it could have been, many months ago, the sound course in all the present circumstances (including the powerful indications that there is no taint) is to postpone decision, leaving open reconsideration after trial if there is an occasion and a desire for that. See United States v. Nolan, 420 F.2d 552 (5th Cir. 1969), cert denied, 400 U.S. 819 (1970); cf. United States v. First Western State Bank, 491 F.2d 780, 787 (8th Cir. 1974). At that time, the Government's evidence will have been presented, and the issue may be explored with a precision and a directed scope that would be impossible at this point even with a further delay in a trial already too-long postponed.* Accordingly, "good cause" is found for postponing until after trial a final determination of these motions. Fed. R. Crim. P. 12(e).

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* Moreover, a pretrial hearing might necessitate the Government's examination of the bankruptcy testimony, complicating later consideration whether there was any resulting taint at trial. See United States v. Bianco, Docket No. 75-1244 at 3116-17 n.14 (2d Cir. April 8, 1976); First Western State Bank, supra, 491 F.2d at 787.

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Both motions are denied, subject to possible renewal after trial. If there is a conviction, the burden will be upon defendant or defendants to renew so that a hearing may be scheduled without delay.

So ordered.

Dated, New York, New York
May 21, 1976

MARVIN E. FRANKEL

U.S.D.J.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -against- JOHN M. KING and A. ROWLAND BOUCHER, Defendants.	:	75 Cr. 70 MEMORANDUM

FRANKEL, D.J.

Defendant King has moved for disclosure of the results of certain electronic surveillance. The logs of the overheard materials have been submitted to the court for in camera inspection.* This material is found to consist of two conversations to which Mr. King was a party, although not, by any stretch of the imagination, the "subject" of this surveillance. The conversations were overheard during the course of electronic surveillance authorized by then Attorney General John Mitchell; Attorney General Edward Levi has certified by affidavit that the eavesdropping related to foreign intelligence activities.

Having considered the materials in question, together with the legal presentations of the parties,

* The Court has been informed that, pursuant to regulations in force at the time, the tapes were destroyed.

the court reaches the following conclusions:

(1) The surveillance in question was not unlawful. United States v. Butenko, 494 F.2d 593 (3rd Cir.), (en banc), cert. denied, 419 U.S. 881 (1974); United States v. Brown, 484 F.2d 418, 425-27 (5th Cir. 1973), cert denied, 415 U.S. 960 (1974).

(2) In any event, the things heard are so patently unhelpful to the movant, i.e., so plainly unrelated to the subjects of this prosecution, that there is no need for deliveryof this material to the defendant. See United States v. Lemonakis, 485 F.2d 941 (D.C. Cir. 1973), cert. denied, 415 U.S. 989 (1974); United States v. Brewster, 506 F.2d 62, 64 n.1 (D.C. Cir. 1974).

The motion for production is denied.

So ordered.

Dated, New York, New York
May 21, 1976

MARVIN E. FRANKEL
U.S.D.J

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STATE OF COLORADO)
) ss. AFFIDAVIT
CITY AND COUNTY OF DENVER.)

I, WILLIAM R. McDONALD, being first duly sworn, do solemly swear that I was employed by the Internal Revenue Service at Denver, Colorado from September, 1962, until June, 1973; that during the course of said employment I was involved in the examination of tax matters relating to John M. King; that I was present at depositions where John M. King testified as to those tax matters and that I was aware that John M. King's testimony was given under immunity from criminal prosecution; that all facts that I obtained in the course of my tax examination of John M. King were confidential and not to be disclosed to or discussed with persons outside of the Internal Revenue Service; as a result I did not at any time in any manner communicate or transmit any information obtained or received as a result of my tax examination or John M. King's testimony to the Securities Exchange Commission, or the Criminal Division of any United States Attorney's Office, or the Department of Justice outside of the Tax Division.

Further Affiant sayeth not.

Dated this 18th day of May, 1976.

William R. McDonald

Subscribed and sworn to before me this 18th day of May, 1976, by William R. McDonald.

WITNESS my hand and official seal.

My commission expires June 26, 1976.

(Seal)

Notary Public

Exhibit F

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IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 75-CR-70
	)	
JOHN M. KING and A. ROWLAND BOUCHER,	)	
	)	
Defendants.	)	

AFFIDAVIT

JOHN D. MOATS, attorney for Regional Counsel, Internal Revenue Service, Denver, Colorado, being first duly sworn, deposes and says:

1. I am a duly commissioned attorney of the Chief Counsel's Office, Internal Revenue Service with post of duty in Denver, Colorado, and performing my duties under the Assistant Regional Counsel, Denver, Colorado.

2. In my capacity as an attorney for the Chief Counsel's Office, I was assigned as a tax trial attorney to the John M. King tax case on May 11, 1972.

3. At the time of my assignment to the King tax case, I was aware of the immunity provisions provided by the Bankruptcy Act.

4. The immunity provisions of the Bankruptcy Act were considered and discussed in my conversation with Mr. Jack Kelly, of the Securities Exchange Commission in Denver, Colorado. I was specifically advised by Mr. Kelly that he did not want

of any kind pertaining to testimony
proceeding. I, in fact, gave him

e I discussed any part of the John M.
th attorneys for the Criminal Division
stice, either from Washington, D.C. or
Attorney's Office in Denver, Colorado.

a representative of United States
, first contacted me during August 1975.
y provisions of the Bankruptcy Act with
d him that I wanted to proceed very
e would be no possibility of providing
. I can remember no information given
esult of John King's testimony in the

e written request of United States
, certain documents were provided
ue Service files in Denver, Colorado.
documents were obtained as a result of
n the bankrupt proceeding. A file
lippings relating to John King was
ein for the United States Attorney.
references to Mr. King's bankruptcy

estimony, however, the contents of this file was not discussed
ith Mr. Von Stein.

JOHN D. MOATS
Attorney, Regional Counsel
Internal Revenue Service

Sworn to and subscribed before me this 19th day of
January, 1976.

Notary Public

My commission expires: January 14 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :

v. : 75 C.R. 70 (M.E.F.)

JOHN M. KING and A. ROLAND BOUCHER, : AFFIDAVIT

Defendants. :

- - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN J. McCANN, being duly sworn, deposes and says:

1. I am a partner in the law firm of Donovan Leisure Newton & Irvine ("Donovan Leisure"), 30 Rockefeller Plaza, New York, New York 10020. I have been advised by Assistant United States Attorney John R. Wing that the defendant John M. King has filed a Motion Seeking to Dismiss the Indictment in the above-captioned action on the ground that the evidence upon which the indictment is based was obtained as a result of information derived from immunized testimony given by Mr. King in certain bankruptcy proceedings instituted on June 1, 1971.

2. At Mr. Wing's request, this Affidavit is submitted to clarify the record with respect to the nature of documents made available by Donovan Leisure for inspection and copying by attorneys associated with the Securities and Exchange Commission and the United States Attorney's Office for the Southern District of New York.

3. In June, 1970 Donovan Leisure was retained by The Fund of Funds, Ltd. to investigate the circumstances of certain

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revaluations of the assets of The Fund of Funds, Ltd. John E. Tobin was the partner in charge of Donovan Leisure's investigation. Shortly after our firm's engagement, I became the senior associate assigned to that matter. My work on this matter continued until approximately the middle of January, 1971, at which time our investigatory work terminated and Donovan Leisure's representation of The Fund of Funds, Ltd. came to an end.

4. During the course of its investigation, Donovan Leisure accumulated and prepared certain documents which related to the dealings between The Fund of Funds, Ltd. and King Resources Company. Beginning in 1973, under my supervision certain documents which had been obtained or prepared during the course of that investigation were made available for copying and inspection by attorneys associated with the Securities and Exchange Commission and the United States Attorney's Office for the Southern District of New York. All of the documents produced to the government attorneys had been received or prepared by Donovan Leisure during the course of the investigation on behalf of The Fund of Funds, Ltd. and prior to June 1, 1971.

5. I am aware that Donovan Leisure represented a creditor at John M. King's personal bankruptcy proceedings, which commenced on June 1, 1971, almost six months after Donovan Leisure's efforts on behalf of The Fund of Funds, Ltd. had ceased.

6. I have never been told anything about Mr. King's testimony at his bankruptcy proceeding and I am advised by Mr. Tobin that he has never been told anything about Mr. King's

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testimony at his bankruptcy proceeding.

John J. McCann

Sworn to before me this
19th day of May, 1976.

Luisa A. Ferrarese

LUISA A. FERRARESE
Notary Public, State of New York
No. 41-6277025 Qual. in Queens Co.
Certificate Filed in New York County
Commission Expires March 30, 1978

AFFIDAVIT

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

James E. Bye, being first duly sworn upon oath, deposes and states as follows:

1. I have been a partner in the firm of Holme Roberts & Owen since 1960.

2. From time to time, between February of 1967 and August of 1970, Holme Roberts & Owen represented King Resources Company on several matters.

3. Pursuant to a subpoena duces tecum, dated December 12, 1973, I, on behalf of Holme Roberts & Owen, furnished to Mr. Thomas Von Stein, as an officer of the U. S. Securities and Exchange Commission, certain documents that we had prepared on behalf of King Resources Company or International Resources Limited, a wholly owned subsidiary of King Resources Company, prior to the termination of our representation in August of 1970.

4. International Resources Limited and King Resources Company waived the attorney-client privilege in connection with the subpoena duces tecum served upon Holme Roberts & Owen.

5. At the time the documents were furnished, Mr. Von Stein asked me certain questions relating to those documents which I answered to the best of my knowledge and belief. To the best of my recollection, those discussions were limited to those documents and related matters occurring prior to the termination of Holme Roberts & Owen's representation in August of 1970.

6. To the best of my recollection, I am unaware of any testimony by Mr. John M. King in his personal bankruptcy proceedings, except for matters that related to proceedings

instituted by the Internal Revenue Service, and, to the best of my knowledge, did not transmit to Mr. Von Stein, any information relating in any way to any testimony that Mr. John M. King may have given in his bankruptcy proceedings.

James E. Bye

Subscribed and sworn to this 18th day of May, 1976.

Notary Public

My commission expires: May 29, 1978

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AFFIDAVIT

STATE OF COLORADO)
)ss.
CITY AND COUNTY OF DENVER)

James C. Owen, Jr., being first duly sworn upon oath, deposes and states as follows:

1. I have been a partner in the firm of Holme Roberts & Owen since 1961.

2. From time to time since June 1, 1971 I have attended meetings or hearings involving the Chapter XI bankruptcy proceedings of John McCandish King (No. 71 B 1630, filed in the United States District Court for the District of Colorado on June 1, 1971). I made such appearances on behalf of a substantial creditor of Mr. King and his wife, Carylyn Becker King.

3. I am aware that my law firm represented King Resources Company, of which Mr. King was chief executive officer, between February 1967 and August 1970, when we terminated such representation.

4. I did not, to the best of my knowledge, impart in any way to my partner, James E. Bye, any information pertaining to the substance of Mr. King's testimony

which he may have given in his Chapter XI bankruptcy proceedings or of any document introduced or discussed at such proceedings.

James C. Owen, Jr.

Subscribed and sworn to before me this 18th day of May, 1976.

Elizabeth McDowell
Notary Public

My Commission Expires May 29,1978

AFFIDAVIT

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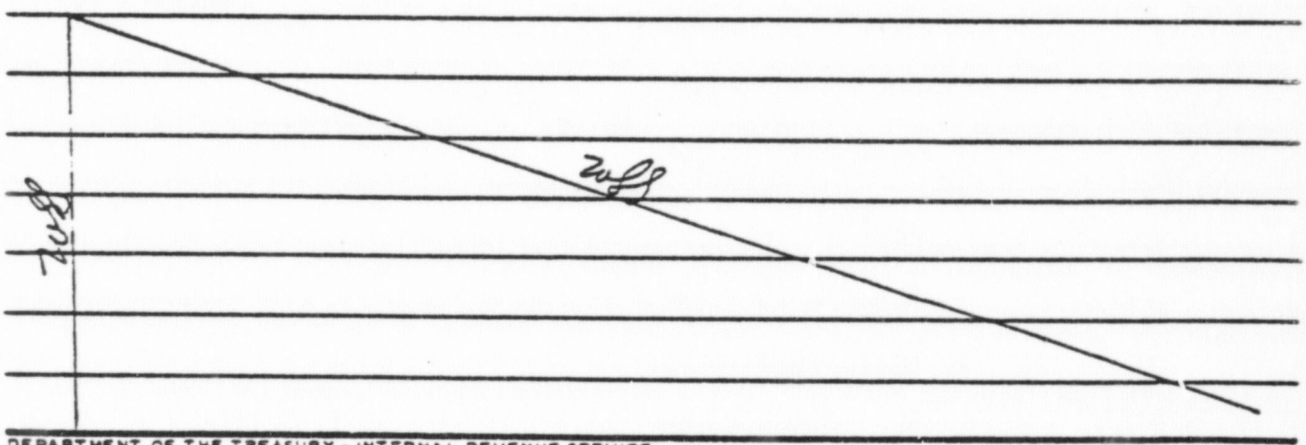
I, William S. Sims, state that:

I reside at 11700 Point West Drive, Little Rock, Arkansas.

I am currently employed as Chief, Examination Branch with the Internal Revenue Service in Little Rock, Arkansas. Prior to my appointment to this position, I served with the Internal Revenue Service in Denver, Colorado. During the years 1971 and 1972, one of my assignments included the examination of the civil tax liability of Mr. JOHN M. KING of Denver, Colorado.

In connection with my duties during this period and specifically the civil tax examination of MR. KING, I was present on at least one occasion where MR. KING was deposed concerning his civil tax liability. During this period of time, I and my associates were aware that KING'S testimony was immune under certain sections of the Bankruptcy Act.

To the best of my memory, I did not communicate any information concerning the civil tax liability of MR. KING to any officials of the Security and Exchange Commission, to any official in the Criminal Division of any U. S. Attorney's office or to attorneys of the Department of Justice outside of the Tax Division.



DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

FORM 2311-A (REV. 3-69)

William S. Sims

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WLS

WLS

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

William L. Sims
(Signature of affiant)

Subscribed and sworn to before me this 17th
day of May, 1976,
at Little Rock, Arkansas

Neal Taylor
(Signature)

Notary Public
(Title)

Internal Revenue Service

(Signature of witness, if any)

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A 537

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

FILE No. HO-669

In the Matter of FUND OF FUNDS, LTD.,

WIT: Erlon E. Nowell

Place Denver, Colorado

Date September 6, 1973

Pages 1-126

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3077

F

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BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
FUND OF FUNDS, LTD. (KING RESOURCES COMPANY)	File No. HO-669

Seventh Floor
Federal Office Building
19th and Stout Streets
Denver, Colorado 80202
Thursday, September 6, 1973

Examination of MR. ERLON E. NOWELL, regarding the above-entitled matter, was conducted in private conference, beginning at 10:15 o'clock a.m.

APPEARANCES:

MR. THOMAS VON STEIN, Attorney, Securities and Exchange Commission, Division of Enforcement, Headquarters Office.

MR. JOHN J. KELLY, Attorney, Securities and Exchange Commission, 19th and Stout Streets, Denver, Colorado, 80202.

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MR. VON STEIN: If, at any time you want to go off the record, just say off the record and we will tell the Reporter to go off the record.

EXAMINATION

BY MR. VON STEIN:

Q Would you state your name and address, please?

A My name is Erlon E. Nowell, my address is 2735 South St. Paul, Denver, Colorado, where I have resided for some 15 years.

Q Your home phone?

A 756-8101.

Q Mr. Nowell, there do exist in Denver pending at this time various bankruptcy proceedings associated with John King, Colorado Corporation and King Resources Company, Imperial American Resources. Have you participated in any of them, or read any of the testimony of any of them?

Off the record, please.

(Whereupon, a discussion was had off the record.)

MR. VON STEIN: Back on the record.

A (The Witness) I have no knowledge personally of the bankruptcy proceedings of any of the parties or companies. I have not participated nor testified in any, and I have not read any of the proceedings.

Q (By Mr. von Stein) Has anybody told you about any of them?

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A Yes.

Q What, in general, have you been told and by whom?

A I think it would be more in the nature of conversation with friends and of the acquaintances. I have not been --

Q Has anybody told you of any of the testimony that they were familiar with in any of the bankruptcy proceedings?

MR. JOHN J. KELLY: Perhaps to refresh your recollection, have you had any conversations, say, with this Mr. Fairchild or anyone like him saying, do you know Mr. "X" was on the stand today, and he said this about the land deal you were in, Mr. "Y" was on the stand and said that the records were falsified in this land deal transaction you were in?

MR. VON STEIN: Anything of that nature?

MR. KELLY: Real specifics. We are not getting into it was a rough time over there today or it doesn't look like we are going to go into bankruptcy, or we will go into bankruptcy. Did these conversations involve any descriptions as to what had taken place at these bankruptcy proceedings?

THE WITNESS: Prior to bankruptcy?

MR. KELLY: No, no. We are just interested, sir, in any conversations you had with anyone involving what this person may have told you as to what took place at any of

these bankruptcy proceedings, and of the bankruptcy proceedings of interest or the King Resources bankruptcy proceeding, Colorado Corporation bankruptcy proceeding, John M. King's arrangement, which is taking place in the bankruptcy court, and of the Imperial American Resources bankruptcy proceeding..

THE WITNESS: To the best of my knowledge, I do not know anyone who testified at any of those proceedings except perhaps by newspaper reports.

MR. KELLY: Can you recall what these newspaper reports were?

THE WITNESS: There have been many.

MR. KELLY: Any that stick in your head, some that might have been of a personal interest to you?

THE WITNESS: I can't remember any that would have been of personal interest to me. The last newspaper story that I can remember pertaining to KRC, Colorado Corporation, would be the Franklin Supply lark story.

MR. KELLY: Right, which is the story about a week or so ago?

THE WITNESS: Last week. Since then there have been time to time newspaper reports pertaining to the trustee in bankruptcy at KRC doing certain things, making announcements of being able to retire debts, pay off liens on oil wells, and things of this nature. To my personal knowledge, I don't

know of anyone that testified at any of those proceedings.

MR. KELLY: Well, now the question, though, is not whether you know of anyone who testified, but whether you have learned from someone else who may have not testified, as to what someone else testified to?

THE WITNESS: Yes. I think perhaps Paul Fairchild with Natural Resources Corporation and I had conversations from time to time, perhaps two or three, pertaining to the bankruptcy proceedings, primarily of King Resources as it affected particular properties of Natural Resources Corporation.

MR. KELLY: Was Mr. Fairchild telling you what people had testified to at the proceeding?

THE WITNESS: No. No, he was telling me more or less cause and affect that he could not trade on a particular property until such time as bankruptcy proceedings moved along to a better point; that the Trustee was having to go to the Court to obtain certain authorities, and as a partner with King Resources, he therefore couldn't farm out, sell, or trade some particular property.

MR. KELLY: The conversations, then, with Mr. Fairchild were in the nature with respect to specific properties that were the subject of negotiation, the negotiations could not be finalized until some administrative act of the bankruptcy trustee was effective; that was holding

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up the show?

THE WITNESS: Correct, and these conversations were initiated and conducted in the light of exploration and of the drilling, and of the oil and the gas, and of the mining industry rather than pursuing specifically any data or information pertaining to bankruptcies.

MR. KELLY: You pronounce your name "Nowell"?

THE WITNESS: Nowell.

MR. KELLY: Mr. Nowell, it appears that the Colorado Corporation bankruptcy proceedings has been hotly contested, and I believe the status now is that there is a receiver in and there hasn't been a final determination if a bankruptcy is going to proceed, whether or not Colorado will be declared.

THE WITNESS: I have no knowledge of that.

MR. KELLY: Well, I was giving that as a matter of background since you did work for Colorado; did you not?

THE WITNESS: Yes.

MR. KELLY: Since this was apparently a hot issue as to whether or not it would go in and this was a former employer of yours -- or are you still with Colorado?

THE WITNESS: No.

MR. KELLY: Well, it is a former employer of yours. You would have been particularly interested in that data, what was going on, whether or not Colorado was going to go

A 544

into bankruptcy and if that was the case, that you would be particularly interested, whether or not you recall anything about that proceeding or any events that took place in that Colorado bankruptcy proceeding.

THE WITNESS: From what point, prior to the bankruptcy?

MR. KELLY: No. I am saying it is a hotly contested proceeding, and you are a former employee, and putting those two together, I would believe you would be interested in finding out the outcome of that battle, and so my question to you is did you follow the battle blow by blow or do you recall any blows?

THE WITNESS: No, I did not follow it.

MR. KELLY: Now you say --

THE WITNESS: Excuse me, may I expound on that?

MR. KELLY: Sure, go ahead.

THE WITNESS: Somewhat. My profession is that of being a land man, and an explorationist. My tenure with the Colorado Corporation was probably not more than a year or a year and a half out of a 30-year career. My employment and the continued employment requires that I have the trust and the confidence of the oil fraternity and of the industry. I felt that when all of the actions that were commenced by all the parties involved, most of which occurred after I left, that a resulting taint on everyone, employees, all employees,

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at those corporations existed. This affects a man's earning power, and to the best of my ability and knowledge, I turned my back on it, and I said I wished the hell that I had never seen it nor heard of it, and I don't want to be involved in any more of it, and the sooner I get it behind me and get engaged in new activities, the more to my liking. The sooner it will disappear as an ominous on my career. So, I have not followed, I have not conversed, to the best of my recollection. The last time I talked to John King was in the fall, I think, September, 1970. I have not talked to any of the Trustees in bankruptcy. I don't even know them. I don't know who the attorneys are for these companies today, and I don't even know who the employees are of these companies today.

MR. KELLY: All right, sir. Would that exploration that we did do, we will give you this admonition, that in framing your answers to any questions we might pose, we don't want in your answers any information that you know has come from the bankruptcy proceeding. All right.

THE WITNESS: I don't have any.

MR. KELLY: I'm just saying that.

EXAMINATION (Resumed)

BY MR. VON STEIN:

Q We have in front of you the Formal Order of Investigation, which you had an opportunity to read when we

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OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

FILE No. HO-669

In the Matter of Fund of Funds, Ltd.,

Wit: William M. Booth, Jr.,

Place Denver, Colorado

Date September 28, 1973

Pages 1-62

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit G

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BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	:	
FUND OF FUNDS LTD.	:	File No. HO-669
KING RESOURCES COMPANY	:	

Conference Room
Seventh Floor
Federal Office Building
Denver, Colorado
Friday, September 28, 1973

Examination of WILLIAM M. BOOTH, JR. regarding the above-entitled matter was conducted in private conference beginning at 2:30 o'clock p.m.

APPEARANCES:

THOMSON VON STEIN, Attorney, Securities and Exchange Commission.

PAUL B. RODDEN, Attorney, 600 Western Federal Building, Denver, Colorado, Counsel for Mr. Booth.

Under 18 U.S.C. 1001 it's a federal offense to give false testimony or false documents to a federal officer. Under 18 U.S.C. 1621 you commit perjury if after having been sworn you give testimony you know to be false. I'll swear you now.

WILLIAM M. BOOTH, JR.

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. VON STEIN:

Q Have you learned anything from speaking to or have you learned anything from any of the testimony which has been given in any of the various bankruptcy proceedings of King Resources or associated companies here in Denver? That is to say, have you discussed anybody's testimony with them and learned something from them?

A No. No.

Q Can you think of anything that you've learned from any of the testimony which has been given in bankruptcy proceedings?

A I can't recall ever discussing any testimony on these bankruptcies with anyone and I don't remember ever seeing any written testimony.

Q Would you state your name?

A William M. Booth, Jr.

Q Your home address and phone?

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OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

FILE No. HO-669

In the Matter of Fund of Funds, Ltd.,

Wit: Stanley B. Hallman

Place Denver, Colorado

Date October 1, 1973

Pages 1-61

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit H

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BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
FUND OF FUNDS, LTD., KING RESOURCES COMPANY	File No. HO-669

Room 7224
Federal Office Building
Denver, Colorado 80202
Monday, October 1, 1973

Examination of STANLEY B. HALLMAN, regarding the above-entitled matter, was conducted in private conference, beginning at 2:30 o'clock p.m.

APPEARANCES:

THOMAS von STEIN, Attorney, Securities and Exchange Commission.

STANLEY B. HALLMAN, pro se.

A I was the treasurer.

Q And how long did you stay?

A I was the treasurer and/or vice president of Colorado Corporation until September or October of 1971.

Q And what did you do after that?

A I resigned and was self-employed.

Q And what duties did you perform while your title was tax man?

A I spent some time becoming indoctrinated with King Resources, and then worked in connection with the familiarization of the tax programs that King Resources utilized, and tried to give them any other ideas which I might have that we would, perhaps, improve some of the programs that they had.

Q Had your background been in tax work?

A Yes, sir.

Q Can you think of anything which you have learned from speaking or in any manner from any of the testimony which has been given in the various bankruptcy proceedings involving the King or King related companies? Can you think of anything that you learned from any of that testimony which may have been given in any of those proceedings, or any areas of information which you may have learned?

A I guess I don't follow you.

Q It is possible that you may have either read somebody else's testimony in a bankruptcy proceeding or spoken with

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somebody who gave testimony in a bankruptcy proceeding. I would like to know if you have done either of those things and if there is anything you can think of that you have learned from that testimony, not your own testimony, but from somebody else?

A Well, I have spoken to Mr. Ocrant and Mr. Hulsey, and they have informed me that they were invited to testify in some of these proceedings, whether it was bankruptcy or what, I don't recall.

Q Do you recall anything that you have learned from them?

A Well, Mr. Hulsey said that the S.E.C. has talked to him about some of the transactions in which he has participated.

Q Was this just recently? Well, if the S.E.C. talked with him, that is okay. I am just thinking about if he testified in the bankruptcy proceedings?

A I don't know if he testified in those. I don't know what proceedings he testified in, to be honest with you.

Q Well, do you happen to know if any of your knowledge of Colorado Corporation, King Resources, comes from things that you have learned from bankruptcy proceedings, or was it just discussions of things you had already been aware of?

A More than likely, the latter.

Q Well, if any questioning I may get into, the answer to which you know could only come from what you have learned

A553

in the bankruptcy proceedings, just say so and don't tell me. I don't want information from that source. What were your duties and functions in the Colorado Corporation during 1969?

A Well, they were varied, of course. The duties were relative for the formation of the Colorado Corporation; not the direct formation; but Mr. Ocrant and I were the only employees of the Colorado Corporation for some time, so that we did many things. My primary function would have been in the areas of taxation, primarily, any matters that related to taxes. I also worked on mergers and acquisitions which had been contemplated and some of which were effected in the Colorado Corporation.

Q Like what?

A The acquisition of General American Development Company by the Colorado Corporation. I also studied very substancially potential transactions between John Mecom and John M. King.

Q Dealing with what?

A Primarily all of Mr. Mecom's assets.

Q Could you tell me a little bit more about that? Mecom was to become a shareholder?

A No, Mr. Mecom and Mr. King were going to go into a partnership, with Mr. Mecom contributing properties to the partnership, and Mr. King was going to contribute stock to the company.

A- 554

A554

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

FILE No. HO-669

REC'D - S.E.C.

NOV - 5 1973

In the Matter of FUND OF FUNDS, LTD.,
KING RESOURCES COMPANY

(Witness: Bob T. H. Hulsey)

Place Houston, Texas

Date October 22, 1973

Pages 1 - 60

- ☐ Request search on personnel named on attached Form SEC 555.
- ☐ Request input on personnel named on attached Form SEC 555A.
- ☐ All or other pertinent persons have been searched.
- ☐ All or other pertinent persons have been input.
- ☐ Search or input unnecessary as to all or other persons.

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit I

A555

A 555

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

FUND OF FUNDS, LTD,
KING RESOURCES COMPANY

File No. HO-669

1122 Southwest Tower,
Houston, Texas.

Monday, October 22, 1973.

The above-entitled matter convened for investigation, pursuant to notice, at 2:00 p. m.

PRESENT:

On Behalf of the S.E.C.:

THOMSON VON STEIN, Esq.

On Behalf of the Witness:

EARL A. BROWN, JR., Esq.
1122 Southwest Tower,
Houston, Texas 77002.

A556

pared to cooperate in any possible way that we can.

MR. VON STEIN: Thank you very much.

Mr. Hulsey, you have the right to be represented by counsel and your counsel has identified himself. Anything you tell me may be used in subsequent proceedings, be they civil or criminal, state or federal.

It is a federal offense to give false testimony or false documents to a federal officer. Under 18 USC 1621 you commit perjury if, after having been sworn, you give testimony you know to be false. You don't have to tell me anything that might tend to incriminate you under the Fifth Amendment.

Off the record a minute.

(Discussion off the record.)

MR. VON STEIN: On the record.

Mr. Hulsey, have you learned anything from the testimony given in any of the various bankruptcy reorganization proceedings of the King entities, which are now in progress?

MR. HULSEY: Have I --

MR. VON STEIN: Have you learned anything from them, from the testimony in any of those proceedings?

MR. BROWN: Have you read any of the testimony?

MR. HULSEY: I have not read any of the testimony. All I have seen is newspaper articles that have been either printed here or in a couple of cases friends in Denver have sent me.

MR. VON STEIN: Do you recall any particular items or areas in which you have learned something new from those clippings or from any of the testimony?

MR. BROWN: Counsel, I am not trying to be -- but you are here to question him about his knowledge of the facts surrounding this, and what would be pertinent about information he obtained from reading newspaper articles which are hearsay in themselves and not reliable, what would that have to do with your investigation? I am really asking for --

MR. VON STEIN: I would be glad to explain it.

We have a problem. I do not wish any testimony that I get to be tainted in any way by testimony which may have been given under an immunity provision, which occurs in the bankruptcy acts. So I don't want -- I want to know if he has learned anything from any of the bankruptcy proceedings' testimony, and that is my problem, and that is why

I asked the question.

MR. HULSEY: Well --

MR. VON STEIN: I mean, I don't --

MR. HULSEY: When you say "learned" you don't mean decisions such as the Judge --

MR. VON STEIN: No, I want -- if there is any substantive information about events which occurred in King Resources or Colorado Corp. or something like that, which came --

MR. HULSEY: I think I can answer that no, Earl. O. K.

I have not.

MR. VON STEIN: You see my problem, Mr. Brown, I hope.

MR. BROWN: Uh-huh.

MR. VON STEIN: O. K.

MR. HULSEY: But my problem --

MR. BROWN: I didn't understand it, but all right.

MR. HULSEY: My problem was when you said "learned", every time you read something or what-not, decisions or so forth, you learn something. O. K.

MR. VON STEIN: I will swear you in.

Whereupon,

A 559

A 559

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

REC'D - S.E.C.

NOV -7 1973

FILE No. HO-669

In the Matter of FUND OF FUNDS, LTD.,
KING RESOURCES COMPANY

(Witness: Neal Marriott)

Place Houston, Texas

Date October 23, 1973

Pages 1 - 34

- ☐ Request search on person(s) named on attached Form SEC 555.
- ☐ Request input on person(s) named on attached Form SEC 561A.
- ☐ All or other pertinent persons have been searched.
- ☐ All or other pertinent persons have been input.
- ☐ Search or input unnecessary as to all or other persons.

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WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit J

A 560

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
FUND OF FUNDS, LTD., KING RESOURCES COMPANY	File No. HO-669

7607 Federal Building
515 Rusk Avenue
Houston, Texas.

Tuesday, October 23, 1973.

The above-entitled matter convened for investigation, pursuant to notice, at 9:00 a. m.

PRESENT:

On Behalf of the S.E.C.:

THOMSON VON STEIN, Esq.

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be used in subsequent proceedings, be they civil or criminal, state or federal.

I have shown you a copy of the Formal Order of Investigation. It's on the table in front of us. You may refer to it at any time, if you wish.

Are there any questions you have concerning the Formal Order?

MR. MARRIOTT: None.

MR. VON STEIN: You are here pursuant to a subpoena which I sent to you, which called for certain documents, which documents you have supplied, and your personal appearance was postponed until today.

Off the record.

(Discussion off the record.)

MR. VON STEIN: On the record.

Have you learned anything from any of the testimony which has been given in any of the bankruptcy proceedings in Denver relating to the King related entities?

MR. MARRIOTT: None. Nothing.

MR. VON STEIN: I will swear you in.

Whereupon,

NEAL MARRIOTT

was duly sworn and upon examination testified as follows:

A 562

A562

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

FILE No. HO-685

In the Matter of

FUND OF FUNDS, LIMITED

Place Washington, D. C.

Date Wednesday, November 7, 1973

Pages 1 - 26

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 392-3007

Exhibit K

A 563

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BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

FUND OF FUNDS, LIMITED

File No. HO-669

Securities and Exchange Commission
500 North Capitol Street
Washington, D. C.
Wednesday, November 7, 1973

Hearing in the above-entitled matter was convened, pursuant to notice, at 2:00 p. m.

PRESENT:

For the Securities and Exchange Commission:

THOMPSON VON STEIN

GEORGE C. HARDIN, JR.

took the stand, and having been first duly sworn, testified as follows:

EXAMINATION

BY MR. VON STEIN:

Q Have you learned anything from the testimony given in any of the various bankruptcy proceedings of the King entities that are now going on in Denver?

A No.

Q Would you state your full name?

A George C. Hardin, Jr.

Q Your home address and phone?

A 204 Arbor Way, Houston, Texas, telephone 782-6150, area code 713.

Q What is your business position?

A I am president of Ashland Exploration Company and senior vice president of Ashland Oil, Inc.

Q And your business address and phone?

A Chamber of Commerce Building in Houston, phone 225-5311.

Q When did you first become associated with any of the King companies?

A In October 1968.

Q And what is your training?

A I am a geologist and petroleum engineer.

In the Matter of:

[redacted]

File No. HO-669

Securities and Exchange Commission
26 Federal Plaza
New York, New York
December 6, 1973

Examination of ARTHUR A. PEDEN, conducted in private conference pursuant to subpoena, in the above entitled matter at 10:25 o'clock a.m.

---oOo---

APPEARANCES:

THOMSON VON STERN, ESQ.,
On behalf of the Division of Enforcement,
[redacted]

[redacted], ESQS.,
Attorneys for Witness,
[redacted]

[redacted],
Of Counsel.

---oOo---

Exhibit L

A566

MR. VON STEIN: All right. I'll deal with that, the numbers alphabetical and I'll deal with that, please?

THE WITNESS: By duly authorized action -- so-called Arabic numeration.

(Thereupon, the aforementioned document was received and duly marked by the reporter as Division's Exhibit 54 for identification, as of this date.)

BY MR. VON STEIN:

Q Mr. Feder, have you learned anything from any of the testimony given in any of the various bankruptcy proceedings now being conducted in Denver relating to King Resources, King himself, Colorado Corporation?

A I am aware of the existence of certain bankruptcy proceedings but I have not learned anything from that proceeding.

Q When did you first become acquainted with Fund of Funds?

A I first became acquainted with Fund of Funds, I would say, prior to its organization and I don't know exactly when that was.

Q 1971?

A I just don't know the specific day. My -- I would be guessing. I think it was some time in '70 or '71 I knew it was organized in connection with the

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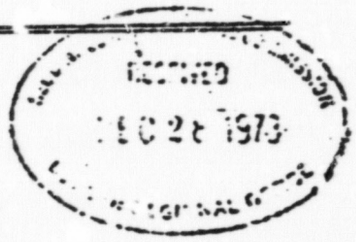
OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission



FILE No. HO-669

In the Matter of Fund of Funds, Ltd.,

Wit: Graydon D. Hubbard

Place Denver, Colorado

Date December 12, 1973

Pages 1-144

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit M

A 568

PROCEEDINGS

MR. VON STEIN: On the record. We are here to take testimony this morning in the matter of Fund of Funds, King Resources Company pursuant to a formal order of investigation dated July 24, 1969.

We previously supplied you with a copy of the formal order.

Our witness this morning is Mr. Graydon D. Hubbard. Mr. Hubbard is here pursuant to a subpoena which I have served on you. I note you have counsel with you as is your right. Would your counsel please state his name for the record.

MR. COGHILL: H. Thomas Coghill, 1700 Broadway, Denver, attorney for the witness.

MR. VON STEIN: Mr. Hubbard, anything you do tell me may be used in subsequent proceedings be it civil or criminal, state or federal. You don't have to tell me anything that would tend to incriminate you. You commit perjury after having been sworn if you tell me something you know to be false.

Under Title 18 U.S.C. 1001 it is a federal offense to give false testimony and false documents to a federal officer. For those purposes, I am an officer; is this clear?

THE WITNESS: Yes, it is.

MR. VON STEIN: Can you think of anything which

A 569

you have learned from testimony given under compulsion in any of the various bankruptcy proceedings in Denver involving the King entities, King Resources?

THE WITNESS: No.

MR. VON STEIN: Also sitting in is Mr. John Pfeiff counsel for the Trustee of King Resources. I will take it that he is here with your consent?

MR. COGHILL: We have no objection to his being present.

MR. VON STEIN: Off the record.

(Discussion off the record.)

MR. VON STEIN: On the record.

Whereupon,

GRAYDON D. HUBBARD, JR.

after having been duly sworn, testified as follows:

BY MR. VON

Q Would you st

A Graydon D. H

Q We have previ

of investigation. Do

A No.

Q Your home addr

A 5031 South Bos

Home phone 771-4882, an

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A570

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
FUND OF FUNDS, LTD. KING RESOURCES COMPANY	File No. HO-669

Room 7224
Federal Office Building
Denver, Colorado 80202
Friday, December 14, 1973

Examination of ROGER L. DAVIS, regarding the above-entitled matter, was conducted in private conference, beginning at 9:00 o'clock a.m.

APPEARANCES:

THOMSON VON STEIN, Attorney, Securities and Exchange Commission.

ROGER L. DAVIS, pro se.

Exhibit N

A 571

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Whereupon,

ROGER L. DAVIS

having been called as a witness, was first duly sworn and, upon examination, testified as follows:

EXAMINATION

BY MR. VON STEIN:

Q State your name, please?

A Roger L. Davis.

Q Your home address and phone?

A 4830 East 17th Avenue, Denver. My phone is 388-4775.

Q Your business position? KRC

A I am Vice President of King Resources under Mr. Baer.

Q What is your business address and phone?

A 201 South Cherokee, Denver. Phone is 778-7171.

Q Is there anything that you can think of that you have learned from testimony which is given under compulsion in any of the various bankruptcy proceedings dealing with King Resources or John King?

A No.

Q How long have you worked for King Resources?

A Since 1962.

Q And, in 1968, what was your position?

A I was the comptroller.

A 572

A572

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

REC'D - S.E.C.

NOV -7 1973

FILE No. HO-669

In the Matter of FUND OF FUNDS, LTD.,
KING RESOURCES COMPANY

(Witness: C. Harrison Cooper)

Place Houston, Texas

Date October 23, 1973

Pages 1 - 68

- ☐ Request search on person(s) named on attached Form SEC 555.
- ☐ Request input on person(s) named on attached Form SEC 561A.
- ☐ All or other pertinent persons have been searched.
- ☐ All or other pertinent persons have been input.
- ☐ Search or input unnecessary as to all or other persons.

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WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit O

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A 573

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
FUND OF FUNDS, LTD., KING RESOURCES COMPANY	File No. HO-669

7607 Federal Building,
515 Rusk Avenue,
Houston, Texas.

Tuesday, October 23, 1973.

The above-entitled matter convened for investigation, pursuant to notice, at 1:00 p. m.

PRESENT:

On Behalf of the S. E. C.:

THOMSON VON STEIN, Esq.

On Behalf of the Witness:

K. RAY CAMPBELL, Esq.,
Suite 270, 2300 West Loop South,
Houston, Texas 77027.

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A574

Can you think of anything which you have learned from any of the testimony which has been given in any of the bankruptcy proceedings of the King entities, which are now in process in Denver? Can you think of anything you have learned?

MR. COOPER: Well, let me just -- I am not sure that I understand the source of this learning. Are you talking about these kinds of documents (indicating)?

MR. VON STEIN: You have read the 167 report?

MR. COOPER: Yes.

MR. VON STEIN: And you have read other things which have come to you through the mail as a K.R.C. shareholder?

MR. COOPER: Yes.

MR. VON STEIN: All right. I don't know whether or not they were particularly based on that testimony, but assuming you have read that, aside from that have you learned anything that you knew to be from testimony given in any of the bankruptcy proceedings?

MR. COOPER: Yes, there's a number of statements in Mr. Baer's report here that I didn't have as much knowledge of as shows up in that statement.

MR. VON STEIN: I see.

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MR. COOPER: I have heard of a lot of these things but I don't have any real --

MR. VON STEIN: Have you discussed with anybody who has given testimony in the bankruptcy proceedings, have you discussed his testimony with him?

MR. COOPER: No.

MR. VON STEIN: All right.

Let's make this typewritten page and a half which you have given me as Exhibit 31.

(Division's Exhibit No. 31 was marked for identification.)

MR. VON STEIN: I will swear you in.

Whereupon,

C. HARRISON COOPER

was duly sworn and upon examination testified as follows:

EXAMINATION

BY MR. VON STEIN:

Q State your full name, please.

A C. Harrison Cooper.

Q Home address and phone?

A 8638 Oakford. Phone is 681-5286.

Q Business address and phone?

A 317 Southwest Tower, ~~228-8241~~ 627-9964

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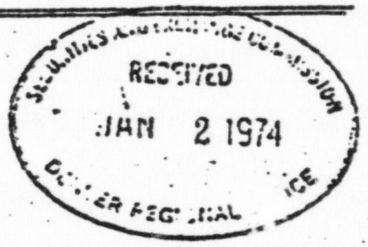
A 576

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission



FILE No. 10-669

In the Matter of FUND OF FUNDS, LTD.,

WIT: WILLIAM V. COFFEY

Place Denver, Colorado

Date December 19, 1973

Pages 1-50

CSA REPORTING COMPANY

OFFICIAL REPORTERS
300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3007

Exhibit P

A577

A 577

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
FUND OF FUNDS LTD., KING RESOURCES COMPANY	File No. 40-669

Securities and Exchange Commission
Seventh Floor Conference Room
Federal Office Building
Denver, Colorado

Wednesday, December 19, 1973

Examination of WILLIAM V. COFFEY regarding the above-entitled matter was conducted in private conference, pursuant to notice, at 8:00 o'clock a.m.

APPEARANCES:

THOMAS VON STEIN, Attorney, Securities and Exchange Commission, Washington, D.C., on behalf of the Commission.

KATHERIN TAMBLYN, Attorney, Feder & Morris, Denver, Colorado, on behalf of the Witness William V. Coffey.

- - - -

A578

Q Your home address and telephone number?

A 3236 Cherryridge Road, 781-6871.

Q Your business address and phone, please?

A 201 South Cherokee, Denver, Colorado; 778-7171.

Q Your position?

A I am doing special projects for the Trustee.

Q For King Resources Company?

A For King Resources Company.

Q During 1968 and 1969 were you employed with King Resources Company?

A Yes, sir.

Q In what capacity?

A I believe part of that period was financial vice-president and part of it as executive vice-president. I don't remember the date exactly that I was elected executive vice-president.

Q We have also discussed off the record the problem of my receiving evidence which may have come from testimony given by others under compulsion in the King bankruptcy proceeding. I ask you and I will attempt to phrase my questions so that you would be testifying as to matters which you learned of your own knowledge either at the time, but not from testimony which has been given under grant of immunity in the King bankruptcy proceedings.

When did you first work for King Resources?

A579

#49

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

:

-against- :

:

JOHN M. KING and A. ROWLAND BOUCHER, :

Defendants. :

----------x

75 Cr. 70 (MEF)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Andrew J. Maloney, Esq., the defendant A. Rowland Boucher will move this Court, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, before the Honorable Marvin E. Frankel, at such time and place as may be convenient to the Court, for an order dismissing the indictment herein as to defendant A. Rowland Boucher, on the grounds that the said defendant has been previously immunized under the Bankruptcy Act, Section 7(a)(10) (11 U.S.C. Section 25(a)(10)), and that the prosecution against the said defendant has proceeded from the use and derivative use of his prior testimony in the Bankruptcy Court.

Dated: New York, New York
May 11, 1976

Yours, etc.,

TO: Robert B. Fiske, Jr., Esq.
United States Attorney
One St. Andrew's Plaza
New York, New York 10007

MALONEY, VIVIANI & HIGGINS
Attorneys for Defendant
A. Rowland Boucher
1290 Avenue of the Americas
New York, New York 10019

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

:

-against- : 75 Cr. 70 (MEF)

: AFFIDAVIT

JOHN M. KING and A. ROWLAND BOUCHER, :

Defendants. :

----------x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ANDREW J. MALONEY, being duly sworn, deposes and says:

1. I am the attorney for defendant A. Rowland Boucher in the instant matter and submit this affidavit in support of a motion to dismiss the indictment as to him pursuant to Rule 12 of the Federal Rules of Criminal Procedure on the grounds that the defendant A. Rowland Boucher at the time he was previously examined had been immunized under the Bankruptcy Act, Section 7(a)(10) (11 U.S.C. Section 25(a)(10)), and that the fruits and leads from such examination have been so diffused in the investigation and prosecution of this case as to require dismissal.

2. For the purposes of this motion, the following facts are submitted to demonstrate that Boucher, during his testimony under the Bankruptcy Act, was (i) acting as a person performing the duties of the

A 581

bankrupt and (ii) that there is reason to believe that the fruits and leads therefrom have been used in the Government's investigation and prosecution.

3. Your deponent has been advised of the following facts in discussions with the counsel for the trustee in bankruptcy of King Resources Company (hereinafter, "KRC"), John S. Pfeiffer, Esq., on May 7, 1976.

4. On or about August 14, 1971, creditors of KRC filed an involuntary petition in bankruptcy against KRC in Dallas, Texas. Thereafter, the Bankruptcy Court appointed Keil Boone as trustee and A. Rowland Boucher as additional trustee. Both trustees were to perform the statutory duties provided under the Bankruptcy Act.

5. On or about October 20, 1971, the bankruptcy proceeding in Dallas, Texas, was transferred to a more appropriate venue, Denver, Colorado. As a result, the then trustee and the additional trustee submitted their resignations, on or about October 20, 1971, Charles A. Baer was appointed trustee by the United States District Court for the District of Colorado, and John S. Pfeiffer, Esq. was designated counsel for the trustee.

6. At all times thereafter and up to and including the date of Mr. Boucher's testimony in the bankruptcy proceeding, he was the chief executive officer of KRC and chairman of its board. He still remains chairman of the board to this date.

A582

7. During the aforementioned period, defendant A. Rowland Boucher, in close cooperation with the trustee in bankruptcy and the trustee's counsel, remained as chief executive officer of KRC. As such, he was paid a salary, performed various administrative duties such as the hiring and firing of personnel, conducted the various drilling programs of KRC, and performed functions with respect to KRC's continuing obligations to its creditors. Additionally, as the trustee's counsel has so advised your deponent, defendant A. Rowland Boucher also negotiated, prepared, reviewed, and implemented, with the trustee's supervision, various natural resource contracts entered into and to be entered into during the course of the bankruptcy proceedings by KRC. Additional duties performed by defendant A. Rowland Boucher in his capacity as chief executive officer of KRC were the submissions of affidavits at the court's direction for the purchase and sale of KRC properties.

8. The bankruptcy proceeding for KRC was a Chapter X reorganization proceeding wherein it was determined at the inception of the proceeding that for the benefit of KRC's creditors and public stockholders the business would continue and that defendant A. Rowland Boucher would continue to run the business. In the course of the Chapter X proceeding, your deponent has been informed, defendant A. Rowland Boucher had almost daily contact with the trustee and/or the trustee's counsel. Furthermore, the trustee's counsel has informed your deponent that both he and the trustee relied heavily on defendant A. Rowland Boucher's management and judgment during the period when KRC was in the Chapter X proceeding.

A583

9. On or about August 6 and 7, 1973, defendant A. Rowland Boucher was summoned to testify in the bankruptcy proceeding of KRC. Your deponent has been advised by counsel for the trustee in bankruptcy that for a substantial period of time he insisted upon taking the testimony of defendant A. Rowland Boucher concerning various transactions whic are the subject matter of the instant indictment. Counsel for the truste in bankruptcy has further advised your deponent that if defendant A. Rowland Boucher had not appeared for such examination, counsel for the trustee would have obtained an order from the court compelling, subject t contempt, his appearance.

10. On August 6, 1973, the defendant A. Rowland Boucher appeared without counsel for the depositions that were to follow.

11. Mr. Pfeiffer advised A. Rowland Boucher that any statements he might make could be used against him and he did advise him of his right to be represented by counsel. However, Mr. Pfeiffer has informed your deponent that he was informed by A. Rowland Boucher that he no longer had funds for an attorney and wished to proceed without one.

12. The areas of inquiry of the deposition were to include:

> "MR. PFEIFFER: The areas upon which I would like to touch on today, just so that we can complete the two areas, would be the Lark-Franklin transaction. I would like to go into the method by which properties were sold to the Fund of Funds aspect of it and if we move on from there, we will see if we can go into some other areas."

A 584

13. Your deponent has been further advised by Mr. Pfeiffer that the results of his investigation for the trustee have been discussed with at least two Assistant United States Attorneys in Denver, Colorado, and with an SEC enforcement attorney assigned to the investigation and prosecution of the instant indictment.

14. Upon discussing the foregoing facts by telephone to Denver with the defendant Boucher, your deponent has been further informed that at the initial Dallas, Texas bankruptcy proceeding, in or about August, 1971, after being appointed an additional trustee of KRC, he was called to testify. Kiel Boone, Esq., Boucher's co-trustee has since informed your deponent that they were orally appointed as trustees on August 20, 1971 by Honorable Dean M. Gandy, Bankruptcy Judge, United States District Court, Dallas, Texas.

15. Your deponent was further informed by defendant Boucher that during the Dallas, Texas proceeding, he was examined at length by an attorney for the Trade Creditors Committee of KRC and by an SEC representative who was present for some five to six hours about the operations of KRC. He does not at this time recall any specific testimony, nor is your deponent in possession of transcripts of same.

16. Boucher further recollects that he has, during the period August 1971 to August 1973, submitted schedules of assets and liabilities, and executory and completed contracts to the trustee in bankruptcy. Furthermore, he advised, he has signed petitions and other affidavits and

A 585

signed off on financial reports submitted to various state and federal regulatory authorities during this period.

17. Due to the alleged discussions by counsel to the trustee in Denver, Colorado with Department of Justice and SEC personnel, as well as the presence of an SEC representative at the Dallas, Texas bankruptcy proceeding, it would appear that the Government has not followed its own directive (circa, April, 1971) as to the safeguards to be utilized to avoid taint of prosecutions of persons afforded immunity under the provisions of the Bankruptcy Act.

WHEREFORE, your deponent prays that the instant indictment as to defendant A. Rowland Boucher be dismissed in that it was, in part, founded on privileged and immunized testimony of the defendant A. Rowland Boucher.

Andrew J. Maloney

Sworn to before me this
12th day of May, 1976.

MARGARET C. HISLOP
Notary Public, State of New York
No. 03-0914500
Qualified in Bronx County
Commission Expires March 30, 1978

A 585-A

A 585-A

May 13, 1976

Honorable Marvin E. Frankel
District Court Judge
United States District Court
Southern District of New York
Court House
Foley Square
New York, New York 10007

Re: United States v. John M. King
and A. Rowland Boucher,
75 Cr. [illegible] (MEF)

Dear Judge Frankel:

Enclosed please find a copy of pages 1 through 5 of the testimony of A. Rowland Boucher on August 6, 1973 in a Chapter X reorganization proceeding involving King Resources Company. The Court is respectfully directed to the prefatory remarks stated to the deponent by Mr. Pfeiffer, counsel to the KRC Trustee in bankruptcy. We trust that the Court will find this helpful in connection with our pending motion to dismiss the indictment predicated on the fact that defendant A. Rowland Boucher was immunized in this bankruptcy proceeding and that the investigatory leads resulting from that proceeding were diffused in the Government's investigation and prosecution of the above-captioned case.

The undersigned is continuing to follow through with our factual inquiry relating to the circumstances surrounding Mr. Boucher's appearances in the bankruptcy proceeding and the contact the government personnel had with the Trustee and his counsel in this case.

Very truly yours,

Andrew J. Maloney

cc: John R. Wing, Esq.
Michael F. Armstrong, Esq.

A585-B

A 585-B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

In Nos. 71-B-2921 and
72-B-644

In the Matter of:

KING RESOURCES COMPANY,

Debtor,

-and-

INTERNATIONAL RESOURCES, LIMITED,

Debtor.

DEPOSITION OF:

A. ROWLAND BOUCHER

1804 Security Life Building
Denver, Colorado
Monday, August 6, 1973

APPEARANCES:

JOHN S. PFEIFFER, ESQ.,

For the Trustee,
Charles A. Baer.

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The deposition of A. ROWLAND BOUCHER, produced, sworn and examined upon his oath on the 6th day of August, 1973, at 10:00 o'clock a.m., at 1804 Security Life Building, City and County of Denver, State of Colorado, before me, Beverlee B. Hedrick, a Certified Shorthand Reporter, a Notary Public within and for the City and County of Denver, State of Colorado, pursuant to agreement for the examination of the said A. ROWLAND BOUCHER, former officer and director of King Resources, Inc., called for examination by the Trustee herein, Charles A. Baer, under Section 167 of the Bankruptcy Act, said Debtors being in Proceedings for Reorganization under Chapter X of the Bankruptcy Act.

IT WAS STIPULATED AND AGREED that even though counsel should not object or except to any questions asked upon this examination or answers given thereto, objections may be reserved until the time of trial on any ground except as to the form of the question, should counsel for either party desire to make such objections at the time of trial, and that this deposition is taken pursuant to the Federal Rules of Civil Procedure.

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A. ROWLAND BOUCHER

being first duly sworn to state the truth, the whole truth, and nothing but the truth, testified on his oath as follows:

MR. PFEIFFER: As you know, I am the attorney for Charles A. Baer, the Trustee, and I am taking your deposition pursuant to the order of the Court which is dated October 27, 1971, appointing Mr. Baer as Trustee, and in that order it directed him pursuant to Section 167 of the Bankruptcy Act that he was to forthwith investigate the acts, conduct, property, liabilities and financial condition of the debtor, which is King Resources Company; the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan and report thereon to the judge; and to examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters or any of them; and shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities and to any causes of action available to the estate; and shall at the earliest date practicable, prepare and submit a brief statement of his investigation of the property, liabilities and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, in such form as the judge may direct, to the creditors, stockholders indentured trustees, Securities and Exchange Commission, and

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such other persons as the judge may designate.

I have asked you to appear here today for the purposes of taking your deposition pursuant to Section 167 and I note that you are here without an attorney. The record should reflect that I have previously discussed this matter with a Mr. Tom Eitel, an attorney in Englewood, who I understand has talked to Mr. Boucher about this matter. At one time Mr. Eitel advised me that he would be representing Mr. Boucher in this matter.

I have requested that Mr. Boucher be represented by an attorney and note that he isn't here. I would like him to state for the record after I have concluded here whether he desires an attorney or not but I would like to make it quite clear to you that if you don't understand any of my questions, make sure you make me repeat them and if at any time you have any hesitancy about answering any questions, please feel free to interrupt and we can postpone it.

All statements you make may be used against you. You have a right to have an attorney and all the various guarantees, and I am at this juncture here investigating the officers and directors and their activities, which means that I am investigating your conduct, too. With that in mind, do you desire to go on now without an attorney?

THE DEPONENT: I am prepared to go on.

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(Trustee's Deposition Exhibits 1 through 13 were marked for identification.)

MR. PFEIFFER: The areas upon which I would like to touch on today, just so that we can complete the two areas, would be the Lark-Franklin transaction. I would like to go into the method by which properties were sold to the Fund of Funds aspect of it and if we move on from there, we will see if we can go into some other areas.

EXAMINATION

A586

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May 21, 1976

Hon. Marvin E. Frankel
United States District Court
Southern District of New York
United States Courthouse
Foley Square - Room 2002
New York, New York 10007

Re: U.S. v. King and Boucher, 75 Cr. 70

Dear Judge Frankel:

Enclosed please find 4 pages which were just hand delivered to me by A. Rowland Boucher and which were obtained by him yesterday from the United States Courthouse, Denver, Colorado. The remaining transcript, I was just informed by Boucher, is 6 to 8 inches thick and remains in the courthouse in Denver.

The enclosed transcript is evidence that at a very early date, October 1971, the SEC, represented by Mr. Waldeck, was made aware of the possibility, if not probability of immunity under the bankruptcy act and until this issue was raised at the 11th hour by the defendant Boucher, the court and his counsel were totally in the dark.

It is our firm belief that the government had an affirmative duty to inform Boucher at least of the enclosed transcript and he should not now suffer the hardship of a lengthy trial because of that derelection.

With respect to Your Honor's opinion filed this date; we respectfully submit page two of your opinion is incorrect when it states, "no one connected with this prosecution has access to or read the bankruptcy testimony". See Von Stein's affidavit submitted by the Government; Mr. Wing's affidavit to which is attached excerpts from the 1971, Dallas Texas, proceeding.

Very truly yours,

Andrew J. Maloney

cc: John R. Wing, Esq.
Michael F. Armstrong, Esq.

Parties on Enclosed Transcript: Mr. Waldeck, SEC
Mr. Gesas, Attorney KRC
Mr. Neary, Attorney for
Trade Creditors Committee

MR. WALDECK: If Mr. Boucher understands what I've said, I will be satisfied with that, Your Honor.

MR. GESAS: May I address the Court, please? There's a recent statute --

THE REFEREE: Yes, I know.

MR. GESAS: -- which provides for immunity automatically when testimony is given. Now, let us consider the --

MR. WALDECK: Your Honor, it is my contention that Mr. Boucher is not being called pursuant to Section 7A10, which Section provides a blanket immunity, rather it is my contention he is being called either as additional Trustee or as a chief executive of the company to testify on the question of venue, not to render the statement of affairs, which the officer of a bankrupt is required to render and to submit to examination with respect to -- in connection with Section 7A10, Section 21A or Section 167.

MR. GESAS: Your Honor, I didn't want to be understood as claiming this immunity. Assuming I was in a position to

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claim it for Mr. Boucher individually, which I am not. I am only pointing out that inasmuch as we're discussing privilege that we better have everything on the boards. Now, it may be that Mr. Waldeck is correct, I guess he'll have to live with that prospect if he's wrong and I merely took the liberty of saying, and as the Court is well aware of, that there is a problem in this area. What the construction of 7A10 or 167 is I certainly have no expertise to determine --

THE REFEREE: Mr. Waldeck and Mr. Gesas, may I see you at the bench, please?

(Whereupon a discussion was held at the bench.)

THE REFEREE: All right, Mr. Boucher, would you take the stand and then Mr. Waldeck will make a statement to you.

MR. A. ROWLAND BOUCHER, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testifed on his oath as follows:

THE REFEREE: All right, Mr. Waldeck.

MR. WALDECK: Mr. Boucher, do you

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understand, Sir, that anything you state here today could be used against you?

THE WITNESS: Yes.

MR. WALDECK: And do you understand, Sir, that you need not answer any question which you believe will tend to incriminate you, Sir?

THE WITNESS: I do.

MR. WALDECK: And do you understand that you need not testify?

THE WITNESS: Yes, I do.

MR. WALDECK: And do you understand that you are entitled to a personal Counsel to represent you personally?

THE WITNESS: Yes, I do.

MR. WALDECK: And given these understandings are you nevertheless willing to testify?

THE WITNESS: Yes, I am.

MR. GESAS: By the statements in answer to Mr. Waldeck, you do not, by those statements, waive any general immunity you may be entitled to?

THE WITNESS: No, sir.

MR. WALDECK: The question of

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immunity is one of law. I am quite --

MR. GESAS: Sure, but inasmuch as the statements have been tendered, I want to be sure that does initiate the law in regard to that.

THE REFEREE: All right, Mr. Boucher, you responded to the statements of Mr. Waldeck, I believe, in the affirmative?

THE WITNESS: Yes, sir.

THE REFEREE: All right, you may proceed, Mr. Neary.

DIRECT EXAMINATION

BY MR. NEARY:

Q Mr. Boucher, would you state your full name for the record,

A A. Rowland Boucher.

Q And what is your present position with King Resources Company?

A Chief Executive Officer of the King Resources Company and Additional Trustee.

Q And you are so serving at the present time under appointment of this Court?

A That is correct.

Q All right, have you given a deposition in connection with this matter?

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and : 75 Cr. 70 (MEF)
A. ROWLAND BOUCHER, :

Defendants. :

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STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN R. WING, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and I am familiar with the facts and proceedings in the above-captioned matter.

2. This affidavit is submitted in response to the defendants' motions based on the claims that the indictment and/or evidence presented by the Government at trial were obtained as a result of the defendants' testimony at John M. King's personal bankruptcy and/or King Resources Company's ("KRC") reorganization proceedings. Thomson Von Stein, an attorney with the Securities and Exchange Commission ("SEC"), has set forth in his affidavit submitted in opposition to these motions how the Government obtained most of the witnesses it called at trial. I will set forth in this affidavit how the Government obtained the two witnesses not covered in Von Stein's affidavit.

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3. Prior to trial, I asked Arthur Lipper who at his company besides himself could testify about the relationship between his company and IOS and identify certain of his company's records pertaining to the IOS account. Lipper told me that Nancy Stewart had knowledge of these matters and I subsequently interviewed her and confirmed that fact.

4. I knew of the Wall Street Journal article of May 1970 in which Harry Trueblood discussed Consolidated Oil & Gas, Inc.'s, Arctic purchase from several sources, including the Donovan Leisure report, and I had obtained a copy of the article. I contacted James Tanner, the author of the article, to learn of the circumstances by which he obtained the statements attributed to Trueblood in the article.

JOHN R. WING
Assistant United States Attorney

Sworn to before me this
30th day of July, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and :
A. ROWLAND BOUCHER, : 75 Cr. 70 (MEF)

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK
COUNTY OF NEW YORK ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMSON VON STEIN, being duly sworn, deposes and says:

1. I am an attorney employed by the Securities and Exchange Commission ("SEC") in Washington, D. C. I have been assigned to assist John R. Wing of the United States Attorney's Office for the Southern District of New York, in the above-captioned matter.

2. This affidavit is submitted in opposition to the defendants' post trial motions claiming that the indictment and evidence presented by the Government at trial were obtained as a result of testimony given by the defendants in John M. King's ("King") bankruptcy and/or King Resources Company ("KRC") reorganization proceedings. Such motion papers in no way specify what particular statements of either King or Boucher in any bankruptcy proceeding led to any witnesses or evidence used by the Government in the trial.

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In response to the defendants' pretrial motions based on the same claim, I submitted affidavits setting forth my contact with certain materials related to the aforesaid testimony and the fact that I did not use any information in that material nor obtain any leads from it. I have read no testimony of John King in any bankruptcy proceeding apart from portions of testimony which King's attorney, Mr. Armstrong supplied to the Government in May 1976. I have not examined the files of John King's bankruptcy proceedings in the United States District Court in Denver. Sometime in 1976, I was informed by the IRS in Denver that John King's appointment calendar for 1969 was Exhibit QQ in King's bankruptcy proceedings. I then did seek to obtain Exhibit QQ from King's bankruptcy files in the District Court. Papers on file in King's bankruptcy showed that exhibit QQ had been removed from the file by King's attorney with the concurrence of the United States Attorney in Denver on the condition that a copy would be replaced in the file. No copy was replaced in the file and I was unsuccessful in obtaining a copy. I also submitted an affidavit describing certain other materials that pre-dated the filings of both the KRC and John King bankruptcies, (and therefore pre-dated any testimony either defendants could have given in the KRC or King bankruptcy proceedings), which material set forth the substance of the evidence presented by the Government at trial and were or led to the sources of that evidence. The Arctic transaction of December 1969/January 1970 had achieved great notoriety in the press in 1970 and in the book, "Do You Sincerely Want to be Rich" ("Sincerely") where it was ridiculed and the revaluation called mathematical gymnastics. The authors concluded "and the affect upon the Fund of Funds was so dire

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that it requires a special brand of chutzpah to defend it in the name of "fairness to investors." This notoriety made the Arctic transaction a natural focus when the SEC began its investigation in July of 1973 into possible fraud by KRC on FOF in the sale of natural resource interests.

3. In this affidavit I will set forth how I came to talk to, wholly independently of any of the defendants' bankruptcy testimony, various persons whom the Government called as witnesses in this case.

4. In June and July 1973 before the SEC authorized an investigation into dealings between KRC and Fund of Funds ("FOF"), Martin Mensch and Allan Schwartz, attorneys for Global Natural Resources Properties, Ltd. ("Global") the successor in interest to the natural resource properties KRC had sold to FOF, gave me certain information including the fact that the Donovan, Leisure, Newton & Irvine law firm and Dr. Pierre Rinfret had made investigations relating to the KRC/FOF relationship in 1970, and that Donovan, Leisure had submitted a report to the FOF Board ("The DL report") in January 1971. They also told me of Armand Frederickson's allegations that the December 1969 Arctic sales to John Mecom and Consolidated Oil & Gas, Inc. ("COG"), were fraudulent and mentioned Harrison Cooper, Bob Hulsey, and Neal Marriott as persons who could have information about the sales.

5. In addition, I read the SEC's clipping file on IOS (which contained no articles about the KRC or John King bankruptcy proceedings) and I had read the book "Do You Sincerely Want to be Rich?"

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6. In June or July 1973, I informed the Denver Regional Office of the SEC that I had been assigned to investigate the KRC-FOF relationship and asked for their help. John Kelly of that office told me he had once written memos of interviews he had with Armand Frederickson in which Frederickson made certain allegations about John King and the Macom and COG Arctic sales. I asked him for copies of those memos. Mr. Kelly informs me that his records indicate he sent me on July 18, 1973 the two memos of February 22, 1971 and March 10, 1971.

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7. Quite early in the SEC's investigation I obtained voluminous documents which had been collected by and the reports and interviews conducted by the Donovan, Leisure law firm and by Dr. Pierre Rinfret, both of whom had investigated the Arctic transaction in 1970. Donovan, Leisure submitted its report to the FOF board in January 1971, at which time they concluded their engagement. Dr. Rinfret reported to the FOF board in July and August 1970 and concluded his efforts at that time. I also was given access to all the documents in the possession of Global, which documents included many internal documents of KRC and Colorado Corp. ("CC")

8. Early in the investigation, I also subpoenaed the work papers of Arthur Andersen & Co. ("AA"), who were the auditors for both KRC and FOF. Their involvement had

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commented on in newspaper reports in 1970 in Sincerely, and in the DL Report.

As defendant's moving papers cite no specific evidence presented by the Government at trial that was obtained as a result of the testimony of King or Boucher, I shall list every witness called by the Government and describe how the Government learned of the possible relevance of such person to this case.

9. Since early 1971, when I began work on the SEC's investigation of the takeover of IOS Ltd. by Robert Vesco and International Controls Corp. I was aware that Allan F. Conwill was a director of FOF and the partner at the law firm of Willkie, Farr and Gallagher primarily responsible for the IOS and FOF account. Conwill is also prominently mentioned in connection with the Arctic revaluation in both the DL report and the materials submitted by Rinfret to the FOF board.

10. Roger L. Davis signed many letters and invoices that KRC had sent to FOF and that I received from Donovan, Leisure, Rinfret, and Global. His name also appears on various documents that I obtained from AA. These documents indicated that Davis was involved in the valuation by KRC of FOF properties in general and in the Arctic revaluation specifically. Davis is also mentioned in connection with the Arctic revaluation in Kelly's Frederickson memo.

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11. Robert Raff and the Fox-Raff transaction are mentioned prominently in the DL report and in Donovan, Leisure documents.

12. I learned that Bob Hulsey had some connection to the Arctic sale to Mecom from Allan Schwartz, in June or July of 1973.

13. I contacted John Mecom because he signed one of the Arctic contracts, and he had been mentioned in 1970 newspaper articles, Kelly's Frederickson memos, AA work papers, and the DL report.

14. In June or July 1973, Martin Mensch and/or Allen Schwartz told me Neal Merriott was John Mecom's lawyer and knew something about the Mecom Arctic contract.

15. I saw Ashland Oil Co. mentioned in an AA work paper as one of the potential Arctic purchasers, which led me to speak to Robert Gordon as to the circumstances of Ashland's involvement in the matter.

16. I interviewed Bennett King because, through Lake Shore Associates, he was one of the Arctic purchasers. Beanett King is also mentioned in the DL report and in Sincerely.

17. On September 11, 1973 I questioned Erlon Nowell. He mentioned Stanley Hallman as being the person who was involved in a number of matters I questioned him about. I spoke to Hallman three weeks later.

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18. Myer Feldman is described as the man who introduced John M. King to Edward Cowett of FOF and IOS in the DL report and in Sincerely.

19. Timothy Lowry's handwritten note to Neal Marriott, attached to the unsigned side agreement between John King and John Macom (Exhibit 1 at the trial), was furnished to me in response to a subpoena I sent to Neal Marriott. Lowry is also mentioned in connection with the Arctic transaction in the DL report and in Kelly's Frederickson memo.

20. George Hardin's signature is on the $275,000 check from Royal Resources Corporation to John Macom, a copy of which Marriott sent me pursuant to my subpoena. Hardin is also mentioned in Kelly's Frederickson memo.

21. I talked to Marshall Willey because, as a financial officer for CC in 1970, he had collected various internal CC documents relating to the various transfers of $275,000 between CC and Royal Resources. He had furnished this file to attorneys conducting a class action suit against John King and others, who furnished it to me.

22. I spoke to Harry Trueblood as he was mentioned in the DL report, 1970 newspaper clippings, Sincerely, and Kelly's Frederickson memos, and was the principal of COG.

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23. The DL report, Sincerely, and Trueblood's June 5, 1970 letter to the shareholders of COG, all state that KRC introduced COG to an Oklahoma bank, from which COG obtained a loan to make its down payment on the Arctic contract. In June or July 1973, the Denver SEC Office told me they had learned in 1970 that the bank was the F&M bank in Tulsa. I interviewed Byron Boone, as he was a director of both the bank and of KRC. At F & M Bank I learned that the paper work on the loan was handled by Houston Adams, the bank's president, whom I then interviewed.

24. Dr. Frederickson, in the memorandum of his interview tith the SEC, stated that Harrison Cooper had information about KRC's purchase of acreage in Bristol Bay, Alaska, from COG.

25. AA workpapers indicated that Phillip Carr and Graydon D. Hubbard worked on various aspects of KRC and FOF audits relating to the Arctic. They are also both mentioned in the DL report.

26. Records of Global furnished to me by Mensch in July or August 1973 that certain CC documents relating to sales of natural resource interests to FOF were prepared by Erlon Norwell.

27. At various times, Neal Marriott told me that Connie Davidson was the person who knew various facts about Mecom's drilling operations.

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28. Minutes of FOF Board meetings, which I had obtained in 1971 in connection with the SEC's Vesco investigation, as well as the DL Report, showed me that Dr. Pierre Rinfret had investigated the FOF-KRC relationship in the summer of 1970. In addition, Mensch and Schwartz told me of Rinfret's investigation.

29. Dr. Armand Frederickson was interviewed by attorneys with the Denver Office of the SEC in February and March, 1971, and talked about the Arctic sales. Mensch and Schwartz also recommended in June or July 1973 that I talk with Dr. Frederickson.

30. I was told by Marshall Willey in June 1976 that Paul MacDowell could probably identify certain books and records of CC.

31. Bruce Dickieson's name was on numerous documents received from Donovan, Leisure and Global concerning natural resource properties sold by KRC and CC to FOF in general and the Arctic revaluation specifically. Dickieson is mentioned in the DL report. I had also known of Dickieson since early 1971 in connection with SEC's Vesco/IOS investigation.

32. Harold C. Gutjahr's name appears on various documents executed by COG in connection with the loan it obtained from the F&M Bank. Also, the DL report stated that in January 1970, Gutjahr signed a letter confirming COG's obligation on the Arctic contracts.

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33. Herbert Becker's name appeared on various Bank of New York documents relating to accounts of FOF and its subsidiaries, and monies transferred in connection with FOF's natural resources interests. I had known of Becker since 1971 in connection with the SEC's ICS/Vesco investigation.

34. Arthur Feder is mentioned in the DL report and in Sincerely. He also signed FOF's Arctic contracts with KRC, which I obtained from Donovan, Leisure.

35. Documents I received from Donovan, Leisure indicated that KRC was authorized to make an offer to Standard Oil of Indiana regarding Midwest Oil Co. I subpoenaed documents from Standard Oil and in addition requested of Standard Oil that they supply me with information regarding any meetings with KRC people. Standard Oil supplied me with a memo written by John Swearingen.

36. Richard Farrell is mentioned in the Swearingen memo as a person who was present at the meeting with King and Boucher in Houston in November 1969.

37. I obtained a carbon copy of a letter from Timothy Lowry's files at KRC, which is virtually identical to the "side agreement" Marriott received from Lowry in 1970. It has the initials "jh" on the bottom. By asking various persons at KRC and by looking in a KRC telephone directory for 1970, I learned that Janice Hopp worked for KRC and was Lowry's secretary in early 1970.

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38. When King's attorneys showed the Government the carbon copy of a memo dated February 1970 purportedly setting forth the substance of a conversation between King and John Mecom concerning Mecom's bankers, I asked Marriott who Mecom's bankers were in early 1970. He told me that First City National Bank of Houston was one. I called the bank and learned that A.G.Gueymard was in 1970 the bank officer responsible for the Mecom account.

39. Charles Carwile's name appears in documents in the John Mecom bankruptcy files (which the Government obtained from Mecom's bankruptcy court in 1975) as one of Mecom's attorneys in those proceedings.

40. Robert E. Dippo's signature appears on the Arctic contracts between KRC and FOF, as well as on other documents that I obtained from KRC's files (including the letter toMecom postponing the date for Mecom's Arctic down payment to January 2, 1970).

41. In examining IOS files in June, 1975, I came across John Schuyler's notes of the meeting of FOF directors on July 16, 1970 in Pierre Rinfret's office. I had been told by attorneys for FOF that Schuyler's notes of FOF meetings existed in such files. I then contacted Schuyler, whom I had known of since 1971 in connection with the SEC's IOS/Vesco investigation.

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42. William White's name appears in several documents I received from Donovan, Leisure as having a loan from an IOS bank. I contacted him in 1975 to inqire of any knowledge he had of Block 175, a separate transaction between KRC and COG. A company that he was connected with had once been offered the opportunity to participate in such transaction.

THOMSON VON STEIN

Sworn to before me this
24th day of July, 1976.

NOTARY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v - : AFFIDAVIT

JOHN M. KING and : 75 Cr. 70 (MEF)
A. ROWLAND BOUCHER,

:

Defendants.

- - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMSON VON STEIN, being duly sworn, deposes and says:

1. I am an Attorney employed by the Securities and Exchange Commission ("SEC") in Washington, D. C. I have been assigned to assist John R. Wing, Chief of the Frauds Unit, United States Attorney's Office for the Southern District of New York, in the above-captioned matter.

2. This affidavit is submitted in opposition to the motions filed by each defendant to dismiss the indictment as having been obtained on the basis of evidence discovered as a result of each defendant's testimony in bankruptcy proceedings.

3. In July 1973, I was assigned to and did investigate the relationships and transactions between King Resources Co. ("KRC") of Denver, Colorado, and IOS, Ltd. ("IOS") and Fund of Funds, Ltd. ("FOF").

AFFIDAVIT OF PERSONAL SERVICE

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4. The indictment focuses on the fraudulent valuation of certain Arctic permits which resulted in a $100,000,000 write-up by FOF in December 1969 of its natural resources fund account and the resulting damage suffered by FOF shareholders. The Arctic sales and revaluation were the subject of intense public and private scrutiny in 1970 and early 1971, before King or Boucher ever testified at a bankruptcy hearing. When I was first assigned in July 1973 to investigate these Arctic sales and the relationship between KRC and IOS, I reviewed a number of materials which, as outlined below, were clearly prepared well before either defendant had testified in any bankruptcy proceeding.

5. Since early 1970, the Arctic transaction has been questioned in the press. The SEC's clipping file on IOS Ltd., contains numerous articles referring to it. For example, a Barron's April 20, 1970 article stated that,

> "Fund of Fund's ("FOF") net asset value per share conveniently jumped from $20.71 to $23.21 on New Years Eve...Yet, less than three months before, the prospectus for the public issue made no mention of any Arctic permits. Without this last moment sale of previously undisclosed assets results for 1969 would have looked less inspiring than they did."

6. In June 1970, after the American Stock Exchange and the Securities and Exchange Commission had halted trading in Consolidated Oil and Gas, Inc. ("Consolidated"), Consolidated's chairman, Harry Trueblood, issued a letter to shareholders that disclosed, among other things, that an officer of King Resources Co. had introduced Consolidated to

AFFIDAVIT OF PERSONAL SERVICE

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a bank in Oklahoma that loaned Consolidated the money for the downpayment for its Arctic purchase from KRC.

7. The May 21, 1970 Wall Street Journal ("WSJ") similarly reported

> "[t]hat [the Arctic] revaluation has since become the center of controversy. . . During his New York interview, Mr. [John] King was asked about a report in yesterday's WSJ that questioned whether IOS Ltd. had inflated the value of its Canadian Arctic oil claims in the December announcement."
>
> "He referred to Consolidated's statement and said: 'There's no discrepancy in the deal'. . . . King wouldn't clarify whether IOS had received the entire $14.12 or only about $7 an acre. He cut off the interview and walked away."

8. On June 15, 1970, the WSJ referred to it as the "controversial Arctic oil rights transaction", and stated:

> "...It is on these [Arctic] valuations that [Arthur] Andersen declines to offer its opinion."

9. The September 1970 issue of Fortune, in a long article on IOS, stated in part:

> "Unfortunately buyers for the Canadian Arctic permits have not proved easy to find."

10. On October 2, 1970, the New York Times reported that Switzerland had banned the selling of Fund of Funds to Swiss due to the spin-off of the natural resources portion of the FOF into the closed-end Global Natural Resources Properties Ltd.

11. In February, 1971, when I was assigned to investigate the takeover of IOS Ltd. by Robert Vesco's International Controls Corp. ("ICC"), I reviewed the SEC

AFFIDAVIT OF PERSONAL SERVI

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clipping file on IOS, which contained the foregoing materials among others and I knew that the Arctic transaction was the subject of some controversy.

12. In April, 1971, a book entitled "Do You Sincerely Want to Be Rich" was published in London. Chapter 19, "John M. King; The Power of Natural Gas," questioned the bona-fides of the Arctic transaction and specifically mentioned John M. King, Henry Buhl, Fox-Raff, Neil MacKenzie, Arthur Andersen & Co., Harry Trueblood, John M. Mecom, Lake Shore Associates, Joel Mallin, Arthur Feder, Barry Sterling, Allen Cantor, and James Roosevelt as having some role in KRC/IOS dealings. In many respects that chapter outlined the fraud charged in this case.

13. The book also described the damage suffered by FOF shareholders because of the Arctic transaction, and questioned the entire KRC/IOS relationship. I read this book in the Spring of 1971 in connection with the SEC's IOS/ICC investigation. In July 1973, when I was first assigned to investigate the instant case, I reread chapter 19 as part of becoming acquainted with KRC/IOS dealings. Chapter 19 is attached as Exhibit A.

14. In June 1970, economist Pierre Rinfret, a consultant to the FOF Board of Directors, was commissioned by the board to study the KRC/IOS relationship. He reported to the board on July 16, 1970 and within a few weeks had finished his assignment. A copy of the materials he submitted to the FOF board is attached as Exhibit B. His investigation raised a number of issues and uncovered facts germane to this case. I reviewed his materials in the summer of 1973.

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15. In July, 1970, the law firm of Donovan, Leisure and Newton was hired by the FOF board to investigate the KRC/FOF relationship. The firm had access to IOS and FOF files and collected numerous documents. It concluded its investigation and engagement in January 1971. I subpoenaed and reviewed their records in the summer of 1973. Among the documents I received was an 80 odd page report, which had been completed by January 1971, on the KRC/FOF relationship. The report went into the Arctic transaction in great detail. Attached as Exhibit C is the Donovan, Leisure report.

16. On February 17, 1971 and on March 10, 1971, Arman Frederickson, a KRC employee, was interviewed by the Denver Office of the SEC. He specifically questioned the bona-fides of the "Arctic transaction" and suggested a quid-pro-quo for the Arctic purchasers. Specifically he named John King, Rowland Boucher, John Mecom, Roger Davis, George Hardin, Bennett King, Harry Trueblood, Timothy Lowry, and Harry Cooper as having some role or information on the Arctic transaction. He also mentioned Bennett King and Edgar Greenebaum as principals in Lake Shore Associates; criticized Boucher's actions; claimed the written Arctic contracts did not set forth the true deal; stated that John King supplied John Mecom the $275,000 down payment; suggested that a KRC purchase from Consolidated of an interest in acreage in Bristol Bay, Alaska, was a possible quid-pro-quo for Consolidated's Arctic purchase; and stated that Timothy Lowry had written a memo regarding a side deal with Mecom.

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17. In the summer of 1973, this information from Frederickson was forwarded to me by the Denver SEC office in the form of two memoranda attached hereto as Exhibit D.

18. The above documents, all of which were written before any King or KRC bankruptcy or reorganization proceedings began, provided the starting point for my investigation, were the bases of the areas into which inquiry was made, and led to all the witnesses and other evidence that were presented to the grand jury in this case.

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THOMSON VON STEIN

Sworn to before me this

day of May, 1976.

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WORLD-WIDE BESTSELLER

THE FABULOUS,
THE AMAZING STORY OF
BERNARD CORNFELD AND HIS
2 BILLION DOLLAR
INTERNATIONAL SCANDAL!

"DO YOU SINCERELY WANT TO BE RICH?"

BY CHARLES RAW,
BRUCE PAGE AND GODFREY HODGSON

EXHIBIT A

and Cowett managed to get the underwriters to come up to $9.50. Complaining bitterly, the IOS Board accepted the price. Bernie was telephoned in Paris, and he too assented, rather reluctantly.

The underwriters were already dispersing toward their homes, and toward the Swiss mountains, when late in the afternoon Cornfeld called Cowett again from Paris. He wanted to talk to the underwriters himself. With some difficulty, Cowett reassembled them and Bernie flew to Geneva to make the new pitch.

"He talked to them about the mystique of the company," recalled Cowett, "and he talked to them about the mystique of ten dollars. And goddam it, he convinced them. Of course, within half an hour, they were unconvinced again —but they had done the deal." It was the conceptual salesman's finest single achievement, and so he closed the deal for a single sale with a face volume of $110 million.

Of that money, roughly half went to the selling shareholders, and the influx to the IOS corporate treasury from the sale of new shares was $52,400,820, after deductions (for underwriting commissions, etc.).

If ever a company needed to raise new capital, it was IOS: on the day the proceeds came in, the effective cash position of the IOS parent company was $1 million. But the respite for the treasury was short-lived. The new cash was rapidly disposed of in a series of intricate and profligate schemes. In order to understand the inner beauty of the grander ones, it is necessary to become better acquainted with John McCandish King.

19

John M. King: The Power of Natural Gas

In which we introduce Ambassador John M. King and describe an industry built on tax avoidance, together with their new chum, our hostess get mixed up in the Middle East crisis, hunting oil in Australia, Ed Cowett discovers the Arctic, IBOFIs and other strange animals appear; Handley Page Aircraft becomes a casualty.

The IOS issue was a hot one. Investors were disposed to believe Ed Cowett when he said that the public offer was inspired essentially by a desire to demonstrate the maturity of IOS, not by a wish to cash in. "We don't need the money, that's for sure," he said. Wise financial heads were inclined to accept that the offshore problem child had grown up and could make a serious contribution to the workings of international capitalism. The feeling induced by the public offer was admirably summed up by a writer in the *Financial Post* of Toronto, the city in which, formally, the Fund of Funds had its home. IOS, said the *Financial Post*, was becoming "increasingly conscious of its public image, and is perhaps becoming a bit more conservative. At the same time, the financial establishment is becoming a bit more daring and innovative —and the two might meet soon in the center." Journalistic appreciations of IOS, in most parts of the world, were moving rapidly from the gunwale to the tubsome; a conviction was spreading, in the words of the London *Observer*, that "the world needs IOS."

The general financial climate was ambivalent. The Dow-Jones index, having declined most of 1969, was wallow-

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ing. But people looked forward to an upturn in 1970: surely this was the bottom of the cycle? IOS appeared to be playing itself respectably with ways of protecting investors against the sluggishness of the stock market. And then on the very last day of the year, IOS displayed a sudden flash of the Old Adam. It was inspired by Ed and Bernie's fatal fascination with the schemes of John M. King, the resident djin of Denver, Colorado.

People used to find it very difficult to understand just what type of business John King's companies were in. Even in a basically laudatory article, a baffled newspaper in Denver had to admit that the city's fastest-moving businessman tended to use "a lot of words to reveal very little." In reply to a puzzled shareholder, King once said the King Resources Company was "a technological service company, oriented toward development and management of natural resources, with superior human resources to do the job. We are a body shop. We create ideas and cause those ideas to be well-financed--then we go out and do the work."

C. Henry Buhl III, the investment director of IOS, was among those who found this sort of language difficult to penetrate. In November 1969, when IOS was investing large sums of money with King Resources, Buhl went out to Denver and spent three days talking with King's executives. Buhl admits to having been convinced by some very unfortunate propositions during his time with IOS, but when he left Denver for Los Angeles, he told the King men, "You know, I don't understand this company."

No sooner had Buhl reached Los Angeles than he received a call from John King himself. "Henry," said King, "I don't think you understand my company."

"You're damn right I don't," said Buhl. "I'll fly out and explain," said King.

John King was going somewhere in one of his private

jets, and he arranged to touch down at Burbank airport. Buhl spent two hours on the rush-hour freeways getting to Burbank, where they sat together in the back of a car while King delivered a two-hour lecture.

It must have been a curious scene. Henry Buhl is a slight, worried-looking man whose only concession to flamboyance in his business dress is a tiny cumul nimbogratus on his shirt. John King stands six foot four and weighs two hundred thirty pounds; he affects cowboy boots, hats with a "K" on the side, and is reputed to own three thousand pairs of cuff links. He has a big, domelike head, piercing blue eyes, and a booming voice.

"He kept talking about the 'use-of-money factor,'" Buhl recalled. "He said King Resources didn't have any projects that were paying less than 60 per cent a year. I said, 'John, I never heard of any investment that always paid 60 per cent a year.' And he said, 'You know what I mean, we cut off the least profitable ones.' When King got out of the car, I still didn't understand his damned company."

King did make at least one very clear financial statement, apropos his connections with Investors Overseas Services. "I'm very hot for international monies," he said. "It is so much easier to do business with those people. . . ."

John McCandish King was born in Illinois in 1927, the same year that Bernard Cornfeld was born in Istanbul. King suffered from asthma and other illnesses during his youth, which meant that his education was upset, and he did not graduate from any of the three universities he attended. He left his last one, Northwestern, not from illness, but because he wished to further his political ambitions.

King was a Democrat until he was eighteen, when he switched to the Republican Party, and at twenty-three he was elected to the Illinois House of Representatives. At the end of his first two-year term, the young legislator

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found that he had about $1500 left over from his pay. He sank it all in a wildcat oil well.

As a number of his customers were to discover later, the chances of hitting oil with any well drilled in the United States are one in four, but only one in eleven hits oil in commercial quantities. The chances of a wildcat striking are one in thirty, but King's first wildcat, drilled on a friend's farm in Oklahoma, did strike oil. "I've always been lucky," he said. "I get into difficult situations, but I always manage to come up smelling like a rose."

The success of that Oklahoma wildcat decided the direction of John King's career. In 1955, King went into partnership with a man called Ben Stevenson in Chicago and formed the King-Stevenson Oil & Gas Co.

But John King did not become an oilman in the same sense as, say, Paul Getty. Nor did the companies he organized do the same kind of things as Standard Oil or Shell. In that sense, John King was not really an oilman at all. He was in the fund business; only his funds were drilling funds, not mutual funds. While Cornfeld owed his power and prosperity to the outflow of dollars beyond the United States, King owed his to features of the taxation system inside the United States. King's business consisted primarily not of exploiting oil fields, but of exploiting the taxation advantages available to those who look for oil fields.

Despite Congressional attacks which have progressively whittled away at those advantages ("inept laws and hysteric emotionalism," said John King), it remains official policy to allow people to claim tax relief upon money invested in the search for oil and upon any income arising from oil discovered. The potential of this system as a "tax shelter" was widely exploited for the first time in the 1950s. Highly paid film stars, sportsmen, and other folk in need of tax relief could not go out and drill their own wells. But there was nothing to stop them getting together

in partnerships, pooling their money into a fund, and hiring a manager to handle the drilling. It was then natural for the managers to turn into promoters, actively selling pieces of such partnerships. Fees increased, and since the manager tended to have little or none of his own money at stake, it often became questionable whether he cared whether his wells struck oil or not. Some wells were thought to exist only on tax returns. Others had to do service for more than one partnership, so that it would have been an embarrassment to strike oil, because accounts would have to be produced. There is said to have been some trade in "dry holes" to meet such difficulties.

Abuses of this sort came to a head in the late 1950s, when a couple of drilling funds collapsed and a cloud settled over the whole business. It suffered a further blow in 1964, when the maximum tax rate was cut, eliminating some of the demand.

At the end of the 1950s, John King moved from Chicago to Denver. The King-Stevenson partnership broke up, and in January 1961 King started up a new concern, King Resources, which took over the oil and gas properties of the old firm. For the first six years of its life King Resources made little mark on the business scene. Then in 1966 John King started up with a new kind of drilling fund, and within three years, *Forbes* magazine reckoned that $300 million would be "a low guess" for King's personal wealth. As to the amount of money his companies controlled, "nobody other than King would dare put a figure on the total. . . ."

The corporate structure that King assembled contained some of the most incestuous intercompany relationships which have ever been attempted, and it was this complexity of relationships that caused people to be puzzled about just what King Resources did. The companies that King formed to manage the new set of drilling funds were not subsidiaries of King Resources Company, but were al-

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owned by John King personally. These private companies managed the funds, but they also contracted most of the oil-exploration work—geological surveys, drilling, pipeline laying, and so on—to King Resources, which in turn often passed on the contracts to independent concerns. An investor's money was subject to many charges in its progress through the corporate layers. Indeed, the prospectuses issued for King's drilling funds had to warn the customers that once John King had taken his cut, they might not get back their original investment.

"It's simple," said King. "You put $100,000 into an oil well and you can expect to make 30 per cent a year if it hits—but you might have to spend a lot more to get that oil. We'll sell you the property, drill the well for you, manage the production, do all the work. If we strike oil, you will make the 30 per cent, but we may make as high as 60 per cent." (Was this the "use of money factor"?)

King succeeded in making this package attractive—at least while there was a lot of money around—through two important innovations which he built into the old concept of the drilling fund. Previously, these had been thought of as suitable only for the very wealthy. King said that it "annoyed the hell" out of him that "only rich people could invest in oil drilling," and with populist fervor he set out to create tax shelters for the common man. His customers in the end were not exactly dirt-common—doctors were probably the largest professional group among them—but King was prepared to aim for lower-paid people.

First, he introduced an installment plan, which allowed people to invest in one of his funds for as little as $150 down and $50 a month. More important, he took a leaf from the mutual-fund book. In old-style drilling funds, an investor would have to wait until the drilling partnership had run its term before he could get any money back. King promised to arrange for the repurchase of his customers' shares on demand. This innovation was the equivalent of the mutual funds' feature of redemption of shares on demand. In the case of King's funds, the level of repurchase price the investor received was to be determined by the "market value" of the fund's drilling operations at the time of repurchase.

Repurchasing brought a new dimension to drilling funds. An investor in oil gets the relief on the "intangible" cost of drilling a well: locating and preparing the site, transporting the rig, and so on. This can amount to three-quarters of total drilling expenses, so that a man putting $10,000 into the operation could deduct $7500 from his taxable income. Assuming he were paying tax at 70 per cent, that means he would enjoy total tax relief of 70 per cent of $7500, which is $5250. Therefore, the *real* cost of his $10,000 stake in the funds' drilling enterprises is only $4750 ($10,000 minus $5250).

Suppose this is a King drilling fund, and after eighteen months the investor asks to take his money out. King may say that the "market value" of the drilling enterprise is only 90 per cent of the original investment—*i.e.*, some oil has been found, but not enough to make such profits as would recoup all the money put up. But even at that "market value" the investor gets out 90 per cent of what he put up, so he gets $9000 out in hard cash. And as the real cost of his investment was only $4750, he has made a profit in eighteen months of $4250, which is nice going. This explains the attraction which John King's operations had for people in high-tax brackets. On top of it was the added advantage that any income derived from oil gets a "depletion allowance," which means that no tax is levied on the 22 per cent of it.*

* The theory is that income from oil arises from an asset which is being depleted, and that the investor should be entitled to recover his capital. The idea is to encourage reinvestment.

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Nevertheless, people found it difficult to grasp the idea that a major corporation could be built around tax avoidance. Those who did grasp it occasionally overlooked the point that *some* oil had to be found—or anyway, the "market value" of the drilling enterprise had to be maintained—if the investors were to come out on top.

King ran into two main drilling funds: Imperial-American, which was supposed to drill mainly in proven territory, and Royal Resources, which was a "wildcat" fund. Each of them had an intricate inner structure; the investor did not become a shareholder in the whole fund as he did in the mutual-fund system. Instead, a King drilling fund was designed as a series of "partnerships," with a new partnership being formed within the fund every quarter. Each investor was given an interest in the first partnership to be formed after his joining the fund. But despite the partnership structure, all the investors' money was "commingled" into one large pool.

When an Imperial-American investor demanded repurchase what happened, formally, was that his partnership interest would be sold to a new partnership. The reality of this was that money coming into the pool from new investors was used to pay off old investors. And the most alarming feature of the system—if its long-term stability were to be considered—was the method of fixing the level of payouts. The "market value" of the underlying drilling enterprises, which set the level of "redemptions" (or in other words, the price which new partnerships paid for old partnerships), was determined by appraisals from independent oil experts. King however reserved the right to "adjust" these appraisals.

An article in the Denver *Rocky Mountain News* in July 1970 analyzed the nature of the adjustments made. It dealt with eight quarterly partnerships of Imperial-American, from the third quarter of 1967 to the second quarter of 1969. King was quoting on these partnerships

an average repurchase value of 80 per cent on face amount invested—which would require the "market value" of the underlying oil ventures to be about $52 million altogether. But the independent appraisers, Lewis Engineering, had valued the lot at just $7 million. King Resources made no comment upon this remarkable "adjustment." It was difficult to escape the conclusion that only a flow of new money was making such repurchases possible.

The article dealt only with the more conservative of the two funds, Imperial-American. Similar analysis of Royal Resources, the "wildcat" fund, shows even less real return on money. From the last quarter of 1967 to the third quarter of 1969 inclusive, investors put $70 million into Royal Resources. All this money was expended for a return of only $2 million—most of which accrued to one lucky partnership. And out of that $2 million had to come royalties, taxes, operating expenses, and a "net operating-profits interest" for King.

The effect of such unkind revelations on King Resources was not unlike the effect of the *L.A. Times* article on Commonwealth United's profits. There was a good deal of running for the windows. King resigned from the chairmanship of King Resources, and the whole concern was able to stagger on only because the creditors feared they would lose even more by forcing liquidation. But by the time the article appeared, King and his companies had made some enormous profits on the flow of money through the funds. "It is probable," said *Dun's* magazine, "that no man, including Henry Ford or John D. Rockefeller, ever made a fortune faster than John King."

The first way John King made money out of the funds was by causing them to make interest-free loans out of their cash pool to King's companies. (At one stage, he borrowed $500,000 of the money personally, though he did pay 6 per cent.) For some time, the money borrowed from the customers was used to pay the commissions of

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outside brokers who sold the fund shares in the first place: an interesting system, which was abandoned after a year or so.

King's personally owned management companies made money from the funds in two further ways. First, they took 25 per cent of the "net operating-profits interest" on fund operations. Most people think of a profit as what remains after all costs are deducted from income: King's definition of his own profit left out so many costs that it closely resembled a straight royalty on all income. Second, King's companies skimmed 5 per cent off all net-cash receipts from any successful drilling operations, before the cash was reinvested in new ones.

But the real leverage effect was achieved through the sales that King Resources Company made to the drilling funds. The funds, which had reached $100 million by the end of 1969, and were swelling rapidly, purchased many of their oil and gas properties, their geological surveys and technical services, from King Resources Company. There was a blatant conflict of interest in this arrangement. Its effect upon the sales, the earnings, and, in turn, the share price of King Resources, was dramatic.

In 1968, King Resources had an income of nearly $38 million from the sale of goods and services to funds managed by King. These were not only his own drilling funds: he had another customer, none other than the Natural Resources Account of the Fund of Funds itself. In 1969, $64 million came from such sales, and in this year, FOF became a more important customer than the King funds. King's private companies also earned juicy commissions for selling the oil-exploration skills of King Resources: more than $3 million in 1969.

King Resources made much more money out of these services than from actually producing oil and gas. In 1969 when the company received $110 million from selling its properties and abilities to funds, it only brought in $6 million from the exploitation of oil and gas resources.

Still, even if it was not rich in real oil, John King's operation, just like IOS, was rich in distinguished names and noble rhetoric. The private empire that was operated under the Colorado Corporation had four main arms: (a) the oil-drilling funds; (b) a real estate division called General American; (c) a group of companies under the title of Regency Management designed to arrange the leasing out of oil-well completion equipment (pumps, storage tanks, pipeline gear, and the like) not to mention aircraft and many other things; and (d) the Denver Corporation, which was responsible for selling the funds, the real estate, and the leasing contracts.

The Denver Corporation was headed by Dr. Edward Annis, ex-President of the American Medical Association and the man who led the battle against John F. Kennedy's Medicare program. Together with Hal Aziue, the scriptwriter who helped him in the Medicare campaign, Dr. Annis prepared drilling-fund propaganda to be beamed especially at doctors, whose average income topped $42,000 nationally in 1969, but who tended to "lack adequate knowledge of investments" as King publicly noted.

The astronaut Frank Borman served on the King Resources Company Board, and another astronaut, Walter Schirra, headed one of the Regency leasing companies. Like Richard V. Allen, a former foreign-policy adviser to President Nixon, Schirra was hired to devote himself to King's international aspirations. Captain Schirra said that "one of John's basic philosophies that drew me into this complex is that whenever you develop something in a country, you pump monies and know-how back in . . . bootstrap a country as I would say it." He said that he and King had often talked about something called "the high-protein concept of feeding the world." Helping undernourished nations, said Captain Schirra, was high risk business, but it was also "humane, compassionate, and exciting. . . . That's what it's all about. The people here

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The ideas. Every once in a while Ed Annis and I meet in the corridor. I say, 'What the hell are you doing here, Doctor?' and he'll say, 'What the hell are *you* doing here, Astronaut?' "

In early summer 1967, John King sent a couple of men to Europe to look at the chances of selling drilling funds there to Americans, who still pay U.S. taxes when abroad, and they duly visited IOS in Geneva. But as IOS was about to agree with the SEC not to sell anything to American citizens anywhere, there was nothing to be done.

The next contact came in December 1967, when Ed Cowett was in New York and got a message saying that King would like to meet him. The introduction was made by Myer Feldman, a Washington lawyer who had been a back-office brain in John Kennedy's presidential campaign of 1960 and had then spent three years in the White House as the President's deputy special counsel. His acute mind was one of the first to spot the possibilities of expanding the fund idea beyond securities.

"I organized one of the first art funds," he told us, "one of the first real-estate funds, and one of the first shipping funds. Natural resources had more potential than any of them." Feldman was already a director of some of the King drilling funds, and he knew Cowett. "One of my dubious claims to distinction," he says wryly, "was to introduce Edward M. Cowett and John M. King."

Superficially, the two men seemed to have little in common. Ed Cowett lives in a mansion overlooking the lake of Geneva, drives a Maserati, and relaxes over the backgammon board. John King's style is a specially stretched black Lincoln with a sunshine roof fixed so that he can shoot from it, and a million-dollar ranch at the foot of the Rockies. But Feldman's introduction brought about a true meeting of minds.

King's first suggestion was that he might buy Investors

Planning Corporation, the American subsidiary that IOS had bought from the Benedicks but which it was necessary to sell under the terms of the SEC settlement. The deal fell through, and it is hardly likely that the SEC would have approved it. But the attraction of the two brains for each other was powerful enough to survive his setback. The more money King could "manage," the more profits he could make. And IOS was eager to invest money in situations where spectacular "performance" might be created.

This was sufficient to account for the Fund of Funds becoming, through its Natural Resources Account, the biggest customer of King Resources. And there was another congruity of interest to develop. In 1968, IOS was eager to send its salesmen back into those underdeveloped countries from which they had been so unceremoniously expelled. So a new "concept" was born: IOS and King together would create systems of natural-resources investments.

One of the first countries to be selected for the privilege of being "bootstrapped" was Israel, whose government had regarded IOS with a cool and skeptical eye almost from the first.* And the result was John King's Midbar venture—which ended with a small international incident, the intervention of the State Department, and the loss of many millions of dollars.

In the summer of 1968, King formed a little company named Midbar Ltd., after the Hebrew for "wilderness." It was registered in London, and was not much publicized. Midbar's audacious purpose, which had the approval of the Israeli government, was to search for oil and gas in the territories and neighboring waters captured from the Arabs during the Six-Day War. The IOS parent company—not the funds—lent Midbar $1 million, and it went

* See Chapter 8, "The Jungle Jangle Jingle."

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to work on seismic studies of the area, which proved encouraging.

King then sent a maritime drilling rig, the *Star I*, out to the Mediterranean, and a land-drilling team to the Sinai Peninsula. The land well was a "dry hole"—but the *Star* struck oil. Unfortunately though, she was drilling in a very exposed position in international waters: thirty miles off the one-time Egyptian port of El 'Arish, which is west of the Gaza Strip. (The safer waters off Israel had been taken by another American company.) The *Star*'s well had to be "capped" and kept quiet, because the Israelis could not guarantee protection for the rig. The problem was that the Israeli Navy had been relying upon the delivery of five new gunboats from France, and de Gaulle had blocked the sale. Before the Israeli Navy managed to commandeer the boats in their celebrated raid of Christmas 1969, the political heat had turned on the Midbar project. The heat was generated by the adventures of a second rig that King sent to go around the South of Africa and drill in the Gulf of Suez itself.

The rig, drawn by a Dutch tug, berthed en route at Abidjan on the Ivory Coast, where a group of Arab saboteurs arrived one night and hung some sticks of dynamite around it. They were not very efficient saboteurs, and the three explosions did little damage—although some members of the rig crew had to spring naked into the water. But by the time the rig had been repaired and was under way again, the incident had focused the attention of the established oil companies upon the implications of Midbar's enterprise.

The oil companies were naturally frightened that the Arabs might take reprisals against U.S. oil investments in Libya and other places, if American companies went on helping Israel search for oil in disputed territory. The State Department was called in, and that was the end of Midbar.

King Resources had to write off nearly $1 million on its Middle East operation, and private investors who had bought participations for $8 million or so, altogether, IOS Ltd. was not a loser: it got $1.3 million back on its $1 million, and was left with a free 25-per-cent interest in Midbar. But that was IOS's own money. The same good fortune did not apply to most of the IOS customers' money that went into other King ventures.

The Natural Resources Account of the Fund of Funds was started on March 4, 1968, and it was rather different from those subdivisions of the Fund such as David Mead or Fred Alger ran. First, until March 1970, IOS never announced who was running the account. As a result the relationship with King was not widely known even within IOS. Second, there was no formal management agreement, and no charge was contracted. The manager of the account was IOS Ltd. itself, and it was handled personally by Ed Cowett. Third, none of the reports of Fund of Funds Proprietary ever gave a breakdown of what Natural Resources Account was invested in.

Although no fee was fixed formally, IOS proposed to reward itself for running the Natural Resources Account by taking 10 per cent of any appreciation in the value of the account's investment whether that appreciation was realized in a sale, or simply entered in the books. Ten per cent of the income from investments, less an expenses allocation, would also accrue to IOS.

The great point about natural-resources investments, however, was that unlike stocks and shares, there was no widely quoted and established market to put a value on "unrealized appreciation." It was up to IOS itself, with the aid of King Resources, to assess increases in the value of any oil-drilling leases or gold mines purchased with the aid of John King's companies. The higher the values estimated, the more profits IOS would receive.

In May 1968, a Fund of Funds prospectus quoted one

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of the celebrated maxims of the Duc de la Rochefoucauld: "The greatest of all gifts is the power to estimate things at their true worth."

By the end of 1969, $60 million from the Fund of Funds had flowed into John King's companies. This was by far the most important destination for new fund investment. Yet no list was published showing the disposition of this cash until March 1970—and even then it did not go out to the investors but appeared as a footnote to an article by John King in the *IOS Bulletin*, aimed mainly at salesmen. "Geologists tell us," wrote King, "that there is an infinite amount of natural resources—the earth itself, the treasures found within it, upon and in the skies above it." King Resources, which he called "a merchant banker of natural resources," was burrowing away in search of these treasures, with special emphasis upon the underdeveloped world, where "the oil exploitation approach" was being avoided.

The subsequent brief note on the FOF money [illegible] is care showed that little had gone to the poorer parts of the world, except for $3 million spent on oil and gas exploration in Gabon and Liberia. More than 45 per cent of the money had gone into King's companies operating in the United States, chiefly to acquire oil and gas prospects. Another 39 per cent had gone to Canada, $11 million having been spent on oil-exploration rights in the Arctic. Eleven per cent went into South Africa and its colony, South-West Africa, where it was divided between a titanium and a diamond prospect. (After the Apocalypse, an IOS executive said he found the Fund of Funds' stake in the diamond business especially hard to assess. "I have looked at this," he said, "and I have looked at it for some time. The result is that I have no way of knowing whether it is a highly valuable investment, or whether it is the biggest heap of bull-shit I have ever seen.")

The real action, the source of hope, was in the Arctic. When the Atlantic Richfield company struck oil at Prudhoe Bay on the North Slope of Alaska in January 1968, a great glamour spread over the 550,000 square miles of North American Sedimentary Basin stretching between Greenland and Alaska. That glamour was much intensified when rights to exploit the new Alaskan oil fields were auctioned off for an average of more than $2000 per acre. It obscured in many minds the fact that the North Slope is only a small part of the whole area—which consists mainly of the Canadian Arctic islands and their seas between. People naturally assumed that here was a bonanza in which the shrewd or fortunate might buy frosty territory cheap, and sell it dear upon the discovery of gushers. But the financial realities of oil exploration are rather more complicated than that.

As long ago as 1931, an explorer named Parry noted that rocks in the Canadian Archipelago smelled of gasoline when broken. A geological survey in 1947 disclosed that the rock formations in the area strongly resembled those of major oil fields, but at that time oil companies were put off by natural hazards. The special nastiness of the Archipelago is that it is *warmer* than the mainland, because its winds come from the Greenland Sea. The snow cover is never thick, and in the twenty-four-hour summer days, when the temperature can reach 65°F., it melts—turning the land surface into a sloppy layer of mud on top of 1500 feet of permafrost, while most of the sea remains frozen. The difficulties of searching for oil there, and of extracting it if found, kept most people's attention fixed on easier exploration prospects.

A few wells were drilled in the early 1960s, after the American nuclear submarine *Nautilus* sailed under the polar icecap and gave rise to the notion that the problem of extracting oil from the Arctic might be solved by pool submarine tankers. But no oil was found, and the Arctic

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perhaps might have been abandoned to the caribou had it not been for a dedicated geologist named Sproule. After much campaigning, the Canadian government announced in December 1967 that it would back Panarctic Oil, the company Sproule created. A few weeks later came the Alaskan strike: the demand for new prospects was higher than in 1947, and suddenly oil companies were rushing into the Canadian Arctic. Optimists reckoned that perhaps half the Canadian area might have potential to equal the North Slope of Alaska. King Resources joined the rush, taking its customer, the Fund of Funds, along with it. And if they found nothing else, they certainly found "performance." By the end of 1969, Cornfeld was telling his salesmen that the Canadian Arctic was "our most spectacular investment"—and if you took IOS's own estimates at face value that was certainly the case. According to their calculations, properties acquired for $11 million had increased in value to $156 million within a few months.

Probably a good many salesmen and investors thought that what IOS was doing in the frozen north was something roughly analogous to buying and selling ordinary real estate. This impression was naturally strengthened when Cornfeld referred to the investments as "leaseholds." But mineral exploration rights in the Canadian Arctic islands are properties of a very complicated sort, with little resemblance to ordinary leaseholds. Ironically, the system was designed to minimize speculation.

What the Canadian government distributes are "permits," usually lasting six years, to explore blocks of territory for oil, gas, or any other agreed-upon mineral. No charge is made for the permits, but they are issued on the condition that a certain minimum amount of money is spent on exploration over the term of the permit. This "work obligation" may be discharged by drilling, by making seismic surveys, or even by researching improved means of Arctic transport. The requirement is expressed

as a cost per acre and the sum depends on the location of the permit area. As an earnest of his intention to spend the money, the permitholder must either make deposits with the Canadian government or find an acceptable financial institution to put up a bond on his behalf. The money can be reclaimed by submitting bills to the government as exploration costs are incurred. The idea is to stop people taking up permits and sitting on them: to keep the permits "in force" exploration work must be undertaken.

There is nothing to stop a permitholder from selling his permits, or an interest in them, to third parties, and, if the territory looks promising, people may be willing to pay a cash price for the privilege of participating in possible eventual profits, in addition to taking on their share of the work obligation. Alternatively, the permitholder may decide that a certain area is worth particularly close exploration and may draw up a drilling program whose cost may well exceed the minimum government work requirements for the area. The permitholder may then decide to "farm out" the work to a third party to whom he will give in exchange an interest in the permit. The planned cost of this program can then also be expressed as a cost per acre, although no cash changes hands. Again, however, in order to "earn" his interest the third party must complete the contracted work, which may take some years—although he may pass on to yet another person a share of the work. In the Arctic, you don't own a thing until you earn it.

Even then it is not that simple. Normally you would not turn a permit into a lease until you have found oil in commercial quantities. At that point it becomes advantageous to convert a six-year permit into a twenty-one-year lease so that you can continue to benefit from the production of that well. Nevertheless, at that point also you run into fresh regulatory complications. In the first place the Canadian government reserves the right to keep

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for itself half your permit acreage. Second, only Canadian citizens, or companies half of whose capital at least is owned by Canadians, may own leases. King Resources would, therefore, have had to float off a separate Canadian company to own leases while the FOI itself would have been, in the words of a Canadian government official who investigated the position, "very hard pressed to hold a lease in its own name."

King's invasion of the Arctic is even now hard to chart with any precision although its broad outlines are clear enough. King Resources' first move was made in the autumn of 1968 when the company took out a number of permits in its own name. These covered about 4.5 million acres and were recorded in the prospectus which IOS helped King draw up for the Eurodollar issue at the end of that year.* The acres, it said, were "scattered in and around the Sverdrup Basin in the Queen Elizabeth Islands" and were described as having "only speculative value." Examining the Arctic enterprise around that time, Neil MacKenzie, boss of King's Canadian operation, said, "We're going to have to be lucky. The mineral-resources industry is a calculated gamble, but if you go into it on a big enough scale, the odds are in your favor."

King's next big deal came in March 1969, when he took a 50-per-cent interest in permits covering roughly 20 million acres. These permits had been taken out by two companies called Transalta and Siebens, who had pooled their Arctic interests. The great bulk of this acreage was offshore, some of it outside the Sverdrup Basin in the Arctic Ocean. Such permits carry only a small government work requirement, for at this stage of the game permits covering big slices of frozen sea are not much desired. It is not drillable in the present state of the art.

King took on an obligation to spend only 20¢ an acre in the first four years of these permits; according to Transalta, King did not earn his interest on them until February 1970, when the necessary money was deposited with the Canadian authorities.

King's third main Arctic stake—and by far his most important one—was a series of complicated farm-out agreements made with Panarctic, the company backed by the Canadian government. They covered some 4.8 million of the more promising onshore acres in the islands. King stood to earn varying interests by undertaking a drilling program of five wells, to be started at various dates before September 1971.

King was maneuvering in the Arctic throughout the summer and autumn of 1969. By late August he had interests, or the right to earn them, in 29,700,000 acres. But in addition to these three main moves, he acquired a number of other interests in return for undertaking to do seismic work or drill wells. King Resources also took out more permits in its own name, including some covering remote sections of Ellesmere Island, the farthest north of all the islands, which he filed in September. By December 22, the acreage in which King had interests had climbed to 35,710,000; the interests varied between 100 per cent and 30 per cent and the average was 63 per cent, so that King's "net" acreage in the Arctic was 22,380,000. It was a half-share in that twenty two-million acres which was Bernie Cornfeld's "most spectacular investment." It was hardly prime oil territory, four-fifths of it being inhabitable, frozen ocean. In Arctic slang, it was mostly "whale pasture and caribou land."

Supposedly, the Fund of Funds went into the Natural Resources Account on a 50-50 basis with King and his companies. Cowell later tried to tell the IOS board that King's "net" acreage in the Arctic was 22,380,000. It was a half-share in that twenty-two million acres which was like that at all in practice. At least, money managers are

* See Chapter 17, "The Master Financiers."

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not usually allowed to sell properties of their own to the funds they manage, which was what King Resources was doing. The Natural Resources Account was built up by the simple device of King companies selling to the FOF half-interests in properties already owned, or about to be owned. And King decided that this was a sales situation in which the philosophy of *caveat emptor* should apply: his companies took markups on sales to the FOF, and it was up to the FOF to object if the prices were too high.

Cowett claims to have been "naive" about these arrangements, and, as dismayed IOS investigators found later, they resulted in some spectacular markups for King companies. In some cases, King's private company, the Colorado Corporation, bought American oil and gas properties and resold to the FOF within days at markups of 1000 per cent more. And that was mild compared to what happened in the Arctic.

The Fund of Funds paid King Resources Company a total of $11 million cash for the privilege of participating in his Arctic interests. And King Resources paid virtually no cash price when taking up the interests—the costs were computed in terms of work obligations assumed, totaling some $20 million. Half of that burden of work obligations was transferred to the FOF at once.

So what the FOF bought, for $11 million, was the right to expend *another* $10 million on permit interests which were in the name of King Resources, most of which had not yet been earned, and which FOF would only be able to hold itself with great difficulty in the event King Resources should fail to perform its obligations.

The Fund of Funds got the right to keep 50 per cent of any profits from any oil or gas which might eventually be exploited—but King Resources arranged to keep a 12½-per-cent overriding profits interest on even that income, should it ever arise, from the FOF part of any individual holding. As King Resources paid virtually no cash purchase price for the Arctic permits, the $11 million paid over by FOF made a truly impressive markup.

Nothing in the conduct of an open-end fund is more important than the regular—usually daily—calculation of its net asset value per share. On this is based both the price of fund shares to new investors, and the redemption price to old investors. The total value of the fund's assets is determined by reference to quoted stock exchange prices, and the total is divided by the number of fund shares outstanding.

It is not so easy to check the value of investments like oil-exploration permits. They are not quoted on any exchange: if the objection to real estate in any open-end fund is that its value is a matter of opinion, the objection to oil permits is that their value is a matter of the most esoteric opinion. Nevertheless, both Ed Cowett and Bernie Cornfeld were determined that the Arctic holdings should not be undervalued—it would, they said, be unfair to the investors. Surely, the value must have increased in 1969, the year of the Alaskan oil auction, the year when the tanker/icebreaker *Manhattan* broke through the Northwest Passage?*

One technique of revaluing a natural-resources holding is to sell part of it: if the buyer pays, proportionately, more than you paid in the first place, it may be fair to apply the increase to the complete holding. But the validity of the technique obviously depends upon the independence of the buyer and the scope of his purchase; when IOS used it in 1968 to revalue another oil and gas holding, doubts arose in the minds of their auditors, Arthur Andersen & Co. Only 10 per cent was sold on that occasion, and it was sold to a broker.

* The *Manhattan*'s voyage led, at the time, to large hopes of improved access to Arctic oil fields. Later, however, the sponsors of the voyage concluded that a pipeline in the Arctic might be more economic.

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In early November 1969, Arthur Andersen (who are also auditors to King Resources) found themselves examining the same technique again. They suggested to King Resources that an increase could be allowed if supported by an arm's-length sale to knowledgeable outside parties. If King Resources Company sold a 25-per-cent interest in all the Arctic permits to Texaco or another major oil company, the auditors believed it would be appropriate to give proportionate value to the 75 per cent retained. Where to draw the line was the problem: the auditors at this stage regarded a 10-per-cent sale as a bare minimum.

Cornfeld clearly had no such reservations about the approaching Coup, and he gave his followers several broad hints in the fall months. On November 14, he addressed the German sales managers at Bad Godesberg. Stock markets might be sagging throughout the world, he said, but fear not: IOS now had an investment policy to transcend such problems. Watch out, he advised them, for a special 10-per-cent jump in the Fund of Funds before the year's end.

Then on December 19, the Fund of Funds published its accounts for the first half of the year: Cornfeld's accompanying report said that there was a "strong possibility" of a partial Arctic sale, and, "in such an event, the over-all holding will be revalued." The letter, on top of the Bad Godesberg hint, implied that the thing was virtually in the bag. Salesmen (who were absolved from sales loads) rushed into the Fund of Funds. One IOS accountant estimated to us that more than $10 million went into the funds in special transactions during December, and most of that could probably be ascribed to Arctic enthusiasm. Much confusion was caused because salesmen were having the computer run stopped so that their last-minute "buy" orders could be accepted.

Overnight, from December 29 to December 30, the Fund

of Funds' net asset value jumped 12 per cent—and on December 31, Cornfeld sent a jubilant letter to his sales managers. The increase, he said, occurred because just 10 per cent of "our over-all interest" in the Arctic had fetched $13.7 million in a sale to three independent oil companies on December 26. Four pages, and a map with the Sverdrup Basin vaguely indicated, were devoted to what Cornfeld called the "enormity" (*sic*) of the Arctic venture. Investments acquired for $1 per acre were already worth $8 per acre on "conservative" estimates, said Cornfeld, and he ventured that the Canadian Arctic might surpass the Alaskan bonanza, with its values of $2000 per acre.

Oil is an unpredictable commodity, and the Archipelago [illegible] to be [illegible] world [illegible] investment history. At the time that Cornfeld wrote, FOF had not in fact sold anything to anybody; the actual events of the Arctic "sale" were very unlike Cornfeld's description.

The idea of revaluing the Arctic permits developed while the acquisition was still going on. At least the FOF accounts say that a $3.6 million increase was recorded at June 30, 1969: that was over two months before the permits had been taken out on the lonely Ellesmere Island (covered by a permanent icecap, according to the Geological Survey of Canada). It was, in fact, before one-third of the joint interests had been taken up, according to the King Resources documents filed with the SEC. It was also before the interests had been carried. This revaluation occurred before the spectacular auction of Alaskan rights, and before the *Manhattan*'s hopeful voyage. During the summer of 1969, it is claimed, IOS was negotiating to sell part of its interest, but the deal fell though. IOS made it clear to King Resources that a sale of some part of the interest was desired as soon as a buyer could be found.

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The transaction which was eventually used to justify the complete revaluation was not negotiated by IOS. It began with a game of golf between Rowland Boucher, President of King Resources, and Harry Trueblood, Chairman of another Denver firm, Consolidated Oil & Gas. King Resources owned interests in several wells operated by Consolidated; during the game, Trueblood said that he would like to buy into King's Arctic action.

Harry Trueblood and John King, who met in 1959, are neighbors in Cherryville, outside Denver. Over the years their various companies have exchanged with each other many deals in oil, natural gas, and other things. By 1969 their affairs were considerably intertwined. For instance, Holiday Airlines, controlled by Trueblood, had just leased an airliner from King's Regency Income Corporation to serve Lake Tahoe, in the Sierra mountains, where King's real-estate arm was developing a project called Innisfree, "dedicated to the total recreation concept." Indeed, there was a joint project with King which actually stood in the way of Consolidated's Arctic ambitions: this was a plan to redevelop part of downtown Denver, at considerable expense. Because of this Consolidated was strapped for cash and any Arctic deal would have to be specially tailored.

However, the negotiations begun on the golf course ended with a deal on December 26, 1969. Consolidated Oil & Gas agreed to take over ½2nd part of the whole Arctic package—which then consisted of permits applying to 22,264,000 net acres. Consolidated agreed to pay a price for being let into the action, and also agreed to assume a proportion of the work obligations.

The price was $5,218,242--but only $443,550 was cash. Consolidated did not have to pay any of the balance of the price until June 1973, and that was only to be the first of a three-year series of installments. Yet, even on these easygoing terms, Consolidated did not find the deal an easy one to sign. Harry Trueblood's company was unable

to make the down payment until someone from King Resources found a bank in Oklahoma that was ready to lend the necessary cash.

In addition to this *price*, Consolidated agreed to relieve King of a part of the *expenditure* necessary to keep the permits active. Consolidated assumed $5,218,242 of the total obligation of $20,872,564. So, in order to get into the Archipelago, Harry Trueblood had assumed liabilities up to a total of $10,426,484. As this brought him only ½2nd of the whole net interest—or 3.125 per cent--you could say that he would be laying out, over six years, $15 for every net acre of interest which would accrue to Consolidated. Insofar as Cornfeld's rhapsodic letter to his salesmen bore any relation to reality, his price of "$15 per acre" was based on this kind of computation.

The sale to Consolidated was too small and too intimate to pass muster on its own for revaluation purposes. It was, however, buttressed by certain other transactions.

At virtually the same time as the Consolidated deal, King Resources sold another small slice of the Arctic to John M. Mecom, one of the more colorful oilmen in Houston, Texas. Stewart Alsop once reported that the industry credited Mecom "with a sort of magical intuition about what lies below the surface of the earth," but Mecom's trifling instincts do not seem to have been vastly excited on this occasion. He took up only 3/64th of the whole. Mecom, like Consolidated, undertook total liabilities which could be worked out to $15 per acre. But he also did the deal on the same "never-never" terms.

Even these two sales only disposed of 5/64ths of the Arctic package. But on December 30, with time running out a little concern called Lake Shore Associates entered the bidding, and took another sliver of the Arctic off King Resources' hands. On terms similar to Mecom and Consolidated, Lake Shore Associates took up 1/32nd part of the Arctic.

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The sales to Consolidated and to John Mecom could be squared approximately with Cornfeld's talk about sales to independent oil companies - even if Consolidated's independence might leave something to be desired in terms of a revaluation sale. But Cornfeld's account does not square in the case of Lake Shore Associates. It is not a company at all but a private partnership, including among its members John M. King as well as Bennett King (who happens to be no relation to John M.), who was the man who signed the contract for Lake Shore.

These three fractional sales could be totaled up to make 5.46875 per cent of the Arctic package. It was still a long long way from looking like a 25-per-cent sale to Texaco. But at this moment, another purchaser came forward to improve the figures.

This was none other than John M. King, acting this time in his personal capacity. On December 31, 1969, John King bought from King Resources Company a 1/16th part of the Arctic permit package. Once again, very little cash changed hands: there was a small down payment, plus a set of obligations for the future.

This set of maneuvers made it possible to say, in the last hours of 1969, that 7/128ths—or just over 7 per cent—of the Arctic interest had been disposed of. Half of the purchase price consisted of a series of easy credit arrangements. The other half consisted of undertakings to relieve King Resources Company of obligations. There was no certainty that those undertakings would ever be carried out, in which case the work obligations would have to be assumed by King Resources if the permits were to be kept alive. (And within twelve months, as it happened, John Mecom and his companies were in deep financial trouble, and Consolidated was in dispute with King Resources over the deal.)

This pantomime did not remotely resemble the "arm's-length" sale of 25 per cent to a major oil company—

which was what the auditors had suggested in November. It was not even the 10-per-cent sale which had then been called a bare minimum. But it was enough for Bernie and Ed.

IOS promptly transferred a flat 10 per cent of the FOF Arctic holding—that is 5 per cent of the whole package—back to King Resources. They then said that FOF had sold 10 per cent of its holding to "three independent oil companies." On that basis, IOS re-estimated the "true worth" of the FOF's remaining interest in the mixed bag of permits. The whole thing had been taken up virtually for nothing by King Resources, IOS now decided that the 45 per cent which the FOF retained had increased in value to a staggering $156 million.

The figure was not actually taken out of the air, but the computation upon which it was based was more involved than was suggested by the subsequent explanation in the FOF accounts. Altogether, it must have been a difficult judgment for Arthur Andersen & Co.—as hard as any they faced in ten years of auditing IOS Ltd. and its funds.

When, rather belatedly, the FOF accounts appeared in summer 1970, there was a note which said that a sale of 10 per cent of the Arctic interest had been made to King Resources, the "operator" of the interest, on "the same bases and terms as a December 1969 sale by such operator of a 9.375-per-cent interest to outside third parties." The percentage 9.375 per cent of the "operators" half-interest is the same thing as a 1/16th part of the whole—namely, the slice taken up by Consolidated Oil & Gas plus John Mecom. Apparently, these two purchasers were the only ones who could be used in actual accounts as "outside third parties." The other sales to Lake Shore and to John M. King simply helped to give color to the claims by Cowett and Cornfeld that an important sale had been made.

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Although they shyly declared themselves "not competent" to pronounce upon the actual valuations produced on the basis of these sales, the auditors did say that they had checked over the procedures involved to make sure that they were as described in the accounts. Even so, the description does not tally properly with the actual events of FOF's sale back to King Resources.

The accounts say that "sales proceeds consisted of $779,300 cash down payment and $7,570,000 payable in six semiannual installments beginning in 1973. . . ." These figures would have been correct if King Resources had contracted to pay the FOF for its 10 per cent in exactly the same way that King Resources was to be paid by Consolidated, Mecom, Lake Shore, and John W. King personally. This was not so. King Resources was proposing to take the same credit, but the payments were different.

King Resources' down payment to the Fund of Funds was actually $606,618.59 rather than the $779,300 given in the accounts. And the amount that King Resources contracted to pay off in installments was not $7,570,000—but $5,795,726.96. The difference sprang from the fact that King Resources had a 12½-per-cent "net operating-profits interest" on all the FOF holdings in the event oil should be found. When buying back, King Resources "lost" this interest on the FOF customers' investment, and a valuation was added to the price to account for this loss.

For the purpose of revaluing, however, IOS and its auditors assumed that King Resources had actually paid FOF the same price as it had received when selling to Consolidated. The Fund of Funds' remaining 45 per cent was declared to be worth $14.1 per net acre—and it was this which produced the new gross value of $156 million. This was then solemnly discounted: first, by taking off an apparently arbitrary $17 million to account for King Resources' 12½ per cent on the holdings retained. Further allowances were made to allow for the interest FOF would lose by not collecting the full purchase price for six years, and for the fact that the work obligations would only be paid over three years. These were reckoned at around $20 million, which reduced the new "valuation" to $119 million.

These mathematical gymnastics were taken to mean that the Fund of Funds' investment had appreciated by a sum of $102 million, prudently discounted.* At this point there occurred the first serious cash transaction in the whole enterprise. IOS took $9.7 million out of the Fund of Funds and paid the money to itself as a "performance fee"; a reward for having procured the increased value of the Natural Resources Account.

Elaborate as it was, the whole operation was not really an adequate excuse for removing nearly $10 million of the customers' money for the profit of IOS itself. And the effect upon the Fund of Funds was so dire that it requires a special brand of chutzpah to defend it in the name of "fairness to the investors."

Although the net asset value of the Fund of Funds was bumped up 12 per cent on December 29–30, 1969, the actual transfer of 10 per cent to King Resources did not occur until early January. The object of this maneuver was to avoid taxation, but all the same provision against a tax of about $18 million had to be put on the books. This chopped the "revaluation" down to $74 million. IOS, naturally, having taken its fee on the larger sum—and as a result the Arctic permit interest was left on the books at a figure of $8.01 per acre. This meant that the Natural Resources Account, having paid out a large sum of cash for the privilege of recording notional gain, jumped to 22 per cent of the whole valuation, of the Fund of Funds.

* A small part of the Arctic interest had been placed in the IOS Growth Fund, a new promotion in Germany. It was allocated $2.7 million of the appreciation.

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Within eight months, that whole section had to be removed from the Fund of Funds and closed to redemptions.

It was understandable, in the aftermath of this [illegible] the Arctic looked exactly the sort of gamble [illegible] 1969, the most exciting event had been a "blowout" of natural gas encountered by a Panarctic team on Melville Island: ironically, King/FOF drills nearby found oil seepage, but the permits held there were only for sulfur exploration.

By summer 1970 King Resources was frantically trying to raise money on its part of the Arctic interest—or even just to get rid of its work obligations. But the major oil companies, the only ones with ready money, were in no mood to speculate indiscriminately. British Petroleum took over, for a small sum, King's obligation to drill a well on Graham Island, one of the more promising spots. BP also took an option on another set of permits, but even so the total acreage involved was minute in comparison to the total King/FOF interests. Sun Oil came in on this deal, and took on additionally some of King's obligations on much wider acreages. But Sun still avoided the large, undrillable offshore acreage, which was left to King and the IOS investors. The terms of those deals do not justify, in retrospect, the extraordinary liberties that IOS took with the investors' money: even a real discovery of oil would not do so.

The version of the Arctic deal that IOS announced to the press did not contain anything like the same details as Cornfeld's glowing dispatch to his sales managers. "IOS Funds Receive Late Yule Present From Polar Regions," was the *Wall Street Journal* headline, and the story said that IOS had declared a sale, but refused to reveal the identity of the purchasers. The news delighted the IOS Associates, but not the international financial community.

Those doubts about IOS, which had been smothered over by the public offering, began to creep back into people's minds.

[illegible] but not in March, the Arctic deal became a [illegible] latter and destructive questions—but in February, it did not spoil Bernie Cornfeld's last triumph before the *Institutional Investor* seminar. At that point, the inner rot of IOS was still held back behind the gleaming façade, although it needed all of Ed Cowett's cool nerve to keep it so. At the beginning of February, it was suggested in the Canadian press that the Arctic deal showed that IOS was "not afraid to generate a little controversy," and Cowett had to deploy bold denials. "If anything," he said, "we feel that we are being too conservative, and the natural resources fund is still an undervalued account." He asserted disingenuously that "the sale was made to three large companies, two of which were publicly held."

Once the break did come, it became clear that the manipulations of the Natural Resources Account were only part of the financial symbiosis between the empires of John King and Bernie Cornfeld. Other links, growing out of rather more individual schemes of self-enrichment, had existed back in 1968 and continued through the astonishing year of 1969.

During that year, it must be said, Ed Cowett maneuvered with the ubiquitous velocity of a financial Superman. Casual visitors to his office in Geneva saw only a quiet, bespectacled Clark Kent. But all and any of the terrifying financial problems which swirled around IOS were brought to him, and he eliminated them with dispatch. It was as though he slipped behind a filing cabinet and peeled off his business suit to reveal a magic cloak and a glove-tight body tunic—except, presumably, that the "S" on Superman's chest would be replaced in his case by a large dollar sign. Then Super-Ed would leap into action faster than the

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eye could follow. Zapf new triumphs of conglomerate financing were achieved. Powell the underwriters' fears were assuaged and IOS's own public offer was assured. Bang! the natural-resources invention produced new vistas of speculative investment. Whang! Ker-chunk! new investment "products" were produced for the hungry salesmen to sell.

In between, Cowett undertook another labor, the importance of which, in IOS values, could scarcely be overstated. This was to eliminate his colleagues' tax problems—an undertaking which was bound to lead back to John King, who was in tax avoidance on an industrial scale.

The incomes IOS generated for its chieftains brought problems because most of them were Americans, subject to the U.S. government's unique habit of asking its citizens to pay tax even if resident abroad. Although it is possible to defy the Internal Revenue Service, an American abroad who wishes to keep his citizenship in working order is well advised to make some obeisances to the taxmen. Almost avoidance, naturally, counts as well as payment.

During 1968 Ed Cowett agreed, on the request of George Landau and other colleagues, to investigate systems of personal tax relief. Landau heard nothing more, he says, till the Overseas Development Bank told him that he had a debt of several thousand dollars, which had been written into his account on Mr. Cowett's orders. Taken aback, Landau told Cowett to inform him next time before putting him in debt to the bank. Cowett said it was "no problem": he had just been putting George into a little tax-avoidance scheme.

It was called Foundation Equipment Associates, and Landau was in it along with Cowett himself, C. Henry Buhl, Allen Cantor, Richard Hammerman, and some other big IOS earners. The "Associates" were to borrow money with which oil-well equipment would be bought and then

[illegible] both for the depreciation of the equipment and for the interest on the loans used to buy it. But that was only the start: the real attraction of such schemes sprang from the fact that the U.S. government was still allowing investment credits against tax on purchases of oil equipment. Where ordinary taxation reliefs merely diminish the proportion of an income which is assessable for tax, investment credits acted as straight deductions from an actual tax bill, thus providing the most attractive tax relief of all. And few groups of people have been more passionately attracted by it than the top brass of IOS.

Foundation Equipment Associates was quite a modest scheme, rather like those used by a number of American companies to assist valuable executives. The fact that IOS itself had lent $500,000 to the project was scrupulously recorded in the prospectus when IOS went public. The same could not be said of the schemes which followed—and which were too late to be noted in the prospectus. They were not modest at all: by now, the needs of the masters of IOS for tax relief were so pressing that the necessary devices soaked up nearly all the free cash in the company which had not been diverted into more orthodox follies. It was not just a question of overstic luxuries; by early summer 1969, the people who had big shareholdings which had been acquired cheap under the stock-option plan faced appalling capital-gains tax liabilities as the moment of cashing in approached. George Landau was now only one of a large and slightly desperate crowd when he asked Ed if he was "going to have anything for us this year"?

To deal with this large problem, Ed Cowett recruited the help of a New York lawyer named Joel Mallin. The first difficulty was that the investment credit, that useful concession, was due to be abolished in the summer of 1969, which meant that any scheme following along the

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lines of the previous year's Foundation Equipment Associates would have to be devised well in advance of the public issue in order to claim the investments.

Cowett and Mallin rapidly assembled Beta Foundation Equipment Associates—the alphabetical flavor of the name perhaps conveys the eventual scope they had in mind. The participants included themselves: Henry Buhl; Arthur Feder, a lawyer on IOS's real-estate side; Dick Hammerman, the insurance boss; Harry Sterling, the investment banker; Ira Weinstein, the former Iranian chieftain, now in Canada; and Allen Cantor. Ed Coughlin, the "Happy-Birthday" trouble shooter, had a small piece, and there was a large participation for Bobby Freedman, who had no formal connection with IOS at all and was known best as the Tennis Player. According to Mallin, he was put in "as an old friend of Bernie's and Ed's, who had rendered them various services." The aim of Beta Foundation Equipment Associates was to acquire and lease oil-well "foundation equipment": the pumps, tanks, and associated gear required in an actual working oil well. The equipment it was to buy was already to hand; it was already installed and operating in various wells being run by King Resources Company for the uncertain benefit of investors in the Colorado Corporation drilling funds.

Beta promised to provide some useful tax relief for its hard-pressed members—but the problem now was to find the necessary money. There is little point to such a scheme if one only uses one's own money, for the whole idea is naturally to "gear up" the size of the investment credit obtained by putting in borrowed money, thus covering as large a section as possible of one's original income with tax relief. And as the interest on money borrowed can also be taken off taxable income, the system possess a great structural elegance.

Could a bank be found in time to lend the money for Beta—$4.7 million was required—in time to catch the

investment credits? American banks that had once been willing, even eager, to lend money for such devices were becoming less and less so as the credit squeeze tightened during 1969. There was nothing for it but to turn to IOS's own banking system, and on July 24 the Overseas Development Bank (Geneva), acting as agent for ODB (Bahamas) advanced $4.7 million to Beta Foundation Equipment Associates. Reviewing later the havoc caused by the liquidity of the IOS group by the demands of Beta and similar schemes, Joel Mallin said sadly that the company was the victim of Nixon's credit squeeze"—in other words, if the President had not been so unyielding as to tighten up U.S. bank credit, it would not have been necessary to remove so much cash from IOS to rescue its clients from their tax problems. Even in those tight times it might have been easier to find an outside bank but for the fact that Beta wanted to operate on terms that would give the maximum possible comfort to its participants: the Beta financing was to be repaid over eight years in level installments of interest and principal. This would have the effect that in early years the repayments would be virtually all interest, and thus tax deductible.

Oil-well foundation equipment was far from being the only avenue of tax avoidance available to the men at IOS, for John King, IOS's great ally, was looking into virtually every kind of tax advantage that might be obtained by purchasing equipment, from bottling machines to airliners, and leasing it out again. This, indeed, was the "humane, compassionate, and exciting" business which the accountant Walter Schirra undertook as President of John King's Regency Investors Company. "Leasing," said the King publicity material, "is the new economic way of life." Ed Cowett and his friends at IOS seem to have been enthusiastic converts to it.

Airplanes—with which John King was always fascinated—entered into many of his leasing projects, and IOS be-

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came involved in an especially complicated one, which concluded with the bankruptcy of a British aircraft company, and left Eli Wallit, Harvey Felberbaum, and Roy Kirkdoffer (head of IOS's British sales force) stuck with one expensive and unwanted miniature airliner apiece.

These plans were made by Handley Page Aircraft, a pioneer aviation company and the first ever to go public. Handley Page, having made thousands of wartime Halifax bombers for the RAF, had fallen upon hard times with the regrouping of the British aircraft industry, and by 1969 its whole future depended upon one new plane. This was the Jetstream, an eighteen-passenger turboprop aimed at American commuter airlines. On the basis of an order for eleven Jetstreams from the U.S. Air Force, and promises of large further orders which were made by the U.S. distributors, a firm from St. Louis, Missouri, called International Jetstream, Handley Page committed itself to tool up for production. (International Jetstream was owned by a man named Kenneth R. Craven, a friend of John King's.)

During 1969, International Jetstream sold just ten Jetstreams: all to John King's Regency Income Corporation. Regency planned to lease them out to a little West Coast airline called Cal-State and got as far as finding three investors to finance a Jetstream each at $530,000 a time, including conversion costs: Wallit, Felberbaum, and Kirkdoffer. The three sales bosses, who had never seen the planes, bought them on credit again supplied by the IOS banking system. The advances were made on July 23, the day before the Beta advances and came, with interest, to $1.65 million. The advances were to be repaid out of leasing income on the planes—which was unfortunate for the liquidity of the IOS banks, because, as it turned out, the investment depreciated all too abruptly and there was no income.

Handley Page, being very short of cash, fell behind on

the development program that was required to bring the Jetstream up to its original specification. Jetstream performance was not matching requirements, which was awkward for Regency and for International Jetstream. During the autumn of 1969, frantic attempts were made to keep at least the Jetstream section of Handley Page alive: at one point John King himself made a midnight flight to consult with International Jetstream backers, the Craven Corporation of St. Louis. Kenneth Craven himself was willing to put up $5 million to try and save Handley Page, but King did not join in the rescue bid.

Then Kenneth Craven fell seriously ill, and the U.S. Air Force, growing skeptical about the Jetstream's performance, canceled its order. Cal-State ran into financial trouble and into difficulties over its Civil Aeronautics Board license. Toward the end of 1969, it emerged that the IOS banking system was in the position of having lent out $1.65 million against three of a batch of ten unwanted airplanes, while their manufacturer, Handley Page Aircraft, swooned gently into the hands of the Official Receiver.

George Landau was not a beneficiary of either of these deals, but Cowett still "had something" for him. Landau, along with several other members of the IOS elite was to become a part owner of that interesting beast, the Colorado NOPI.

A NOPI is a Net Operating Profits Interest—we have met the idea before—and John King had a specimen for which he was anxious to find a good home. King, with the approval of his fellow directors, had determined that King Resources, the public company which he effectively controlled, should purchase Colorado Corporation, the private company which he owned. King was to receive King Resources shares in exchange for his Colorado shares, and a deal had been roughed out which would make his new

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holding worth around $700 million. In effect, this deal would put a tanker valuation on the Colorado Corporation without all the tedium and disclosure involved in making a public offering. But the precise details of the scheme were to be fixed up in 1970—and the higher Colorado's 1969 profits, the more John King would get. He therefore wished Colorado to make some profitable sales, and so he turned to the "net operating profits" which the corporation extracted from the funds under its management.

These, it will be recalled, had been designed to exclude so many costs that they closely resembled a 25-per-cent royalty on all drilling funds operations. Colorado's problem, however, was that most of these interests were in properties which had yet to be explored for oil and gas; their value, therefore, could not include such interests in its 1969 income. If, however, those interests could be sold off, then the proceeds *could* be included.

And purchasers were on hand. Late in 1969 Ed Cowell, using IOS's Investors Overseas Bank as agent, agreed to buy a total of $45 million of Colorado NOPIs: $15 million for each of 1969, 1970, and 1971. It was arranged that 25 per cent of each year's NOPI would be paid in cash and the balance would be paid off in four annual installments.

The NOPI was then divided up among a number of the IOS people confronted with terrifying capital-gains liabilities, a predicament in which a piece of NOPI is very useful. American capital-gains tax rules allow an investor to include half of a year's gains lumped in with his ordinary income, and have this half taxed as income. Meanwhile, taxable income may be reduced by setting various types of losses against it. One such permitted offset is the loss involved in abandoning oil and gas properties which have been explored and found to contain no resources.

The charms of the Colorado NOPI thus become apparent: the more dry holes Colorado drilled, the better for the IOS investors. In the event, the NOPI performed better than expected, generating distributions in excess of [illegible] (NOPI) on the face value purchased.

Actual production of income from wells need not be totally embarrassing in a NOPI deal, because the investor can then have recourse to the depletion allowance. Indeed, some income must be made in the end, whether the deal be done on borrowed money or in cash, if the investor is to come out ahead in the end. There is a delicate balance between "sheltering" income and merely pouring into the ground money that would otherwise have gone to Uncle Sam. The evidence is that in the euphoric days of 1969, most people in IOS were more interested in finding some way of protecting their immediate wealth than in thinking out the ultimate implications of dry-hole operations. Cowell was able to assemble an impressive team of NOPI hunters fairly rapidly. There was Landau and his partner Ben Q. Shapiro; Harvey Fellerman and Roy Kinkaider (whose problems could not be solved by Jetstream alone); there was Allen Cantor (who also had a piece of Ikela Foundation Equipment Associates); there was Gladys Solomon; Ambassador Roosevelt; Martin Seligson, the real-estate expert; and there was Bernard Cornfeld himself who took the biggest bite of all, with $5 million of Colorado's 1969 NOPI.

The Investors Overseas Bank paid out the 25-per-cent down payment required to secure the NOPI, amounting to $3,540,000. (A small part found a separate home in New York.) Some of the IOS participants, including Cornfeld himself, paid the IOB off for their pieces of NOPI, so that by the end of the year the bank only had $1.6 million of the original $3.54 million outstanding. Nevertheless, the IOB found itself stuck with $1 million worth of NOPI on its own account, because the whole of the purchase had not been taken up. And the bank issued a promissory note for $10.6 million to cover the balance of the $15-million price for purchase of 1969 NOPI.

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The general strain of financing the tax-avoidance devices was telling rather heavily on the balance sheets of the IOS banks during the latter months of 1969. Formally, the Overseas Investment Bank (Overseas), the Overseas Investment Bank (Bahamas), and the Overseas Overseas Bank were all separate entities under the holding company called IOS Financial Holdings Ltd. In practice, they were handled during 1969 simply as different taps on the same pool of credit.

This was shown clearly in the history of the Beta Foundation Equipment financing. The money was advanced first by ODB (Geneva) as agent for ODB (Bahamas), which then accepted the loan. By October, the whole system was suffering a little from the demands of Commonwealth United Corporation, and some fresh liquidity was required. On this occasion, IOS abandoned subtlety altogether, and as Cowett told us, they turned to Investment Properties International, the real-estate fund which had just been launched and that was flush with cash, and caused it to deposit $6.5 million of its cash reserves with ODB (Bahamas), the bank bearing the Beta and Jetstream loans. This was putting the customers' money to work very directly for the bosses of IOS.

Cowett later defended this maneuver by saying that IPI was not an open-end fund. It was a defense which ignored the fact that IPI shares were at that time being stuffed into the Fund of Funds at such a rate that IPI was becoming little more than a real-estate subaccount of FOF—which certainly was open end. But anyway, when he said it, Cowett must have forgotten that he had inserted in the IOS prospectus for the public offering a firm declaration that IOS banks "do not make loans to, or accept deposits from, Company-managed investment companies." That promise was abandoned almost as soon as it was made.

However, the depositing of IPI cash at ODB (Bahamas) aroused the ire of the Bank of New York, which was Depositary of Cash for IPI. The bank was now Custodian of Securities for IPI, which is not the same thing as [illegible] and was therefore very much concerned with the shenanigans with the National Reserves Account and involved the officials of the bank, so far as we can discover. However, the shifting of the IPI deposit was thought objectionable.

This problem came to a head at the very end of the year, when Ed Cowett, together with Bernie, had retired to Acapulco for a well-earned rest (leaving the Arctic deal to mature). Cowett was forced to spend a good deal of time on the phone from Mexico to Geneva, trying to sanitize the various balance sheets involved before "twelve thirty-one," as accountants call the year-end balance. The International Credit Bank** was asked to help but declined to do so. Money, however, had to be found, because the commitment to the Beta and Jetstream financing remained. So, when the IPI cash went back to New York, money had to be taken directly from the IOS corporate treasury in order to cover the position. First, IOS Ltd. put a deposit into ODB (Bahamas), but this was found to have some esoteric tax drawback. Therefore, the money was lastly inserted into a new bank, ODB (Curaçao) formed in the Netherlands Antilles, but actually existing on a sniper in Geneva. This new bank assumed the Beta and Jetstream loans.

In 1970 a brief respite was found. The Beta loan was placed with the European offshoots of American banks, Wells Fargo and Western American. The agreement, however, was conditional: at the end of April 1970, Wells Fargo and Western American declared that the Beta fund-

* See Chapter 18, "A Very Long Way Offshore."
** See Chapter 8, "The Jungle Jungle Jingle" and Chapter 15, "The Bella Figura of Harvey Feiberbaum."

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ing would only be continued upon receipt of a compensating deposit of $5 million from [illegible] itself.

This was, in financial circles, a moment of little panic. In New York, the Dow Jones was under 800 and falling like a stone. And at IOS it now emerged that, in the blunt words of an IOS accountant, "there was nothing left in the pot." Just over five months earlier, in its public offering, IOS had raised $52 million from the investing public. Suddenly, only one question was being asked around 119 Rue de Lausanne. Where the hell had all the money gone?

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The Book of Revelations

The people who "sincerely wanted to be rich" are in a Rally of millionaires and multimillionaires. Joel Kraft and the "lifetime student of tax deferral," Ossord buy some shares, and the money runs out at last.

On October 15, 1969, a young woman in a mini-car arrived at the City of London office of the Bank of New York and handed over to a small crowd of waiting bankers certificates for 5.6 million common shares of IOS. The bankers had actually been expecting a rather more high-powered deputation, but they paid over $52,466,326 to the IOS treasury in exchange. It was almost certainly the largest single sum which ever belonged to IOS, and constituted the stake in the last great IOS business game.

The statement may seem an odd one, but it must be remembered that the $2 billion in IOS funds belonged to other people. The safeguards over the investment of that money were pliable—but it remained true that the power of that cash could only be used by the IOS team themselves through the adroit use of leverage. The $52 million from the share issue was subject to no such restrictions; the previous chapter began to indicate the spirit in which IOS approached the task of spending it.

The investors were promised, in the prospectus, that the money raised would be used "to develop and expand the Company's activities, primarily in the banking and insurance areas." If that promise was made sincerely it was rapidly abandoned. Apart from [illegible] acquisitions

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. : 75 Cr. 70

JOHN M. KING
A. ROWLAND BOUCHER, :

Defendants. :

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B e f o r e:

HON. MARVIN E. FRANKEL,
District Judge

New York, New York
August 20, 1976
9:50 a.m.

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney
Southern District of New York
JOHN R. WING, Esq.,
PAUL VIZCARRONDO, Esq.,
Assistant United States Attorneys

MICHAEL ARMSTRONG, Esq.,
Attorney for Defendant John M. King

ANDREW MALONEY, Esq.,
NORMAN ARNOFF, Esq.,
Attorneys for Defendant A. Rowland Boucher

THE COURT: Our first business is to have for the defendants the testimony of Mr. Von Stein, is that correct?

MR. MALONEY: Yes, your Honor.

Perhaps it might be of some assistance to the Court if we focus, at least, on what Boucher's position is going to be so perhaps we would be able to best examine Mr. Von Stein and understand where we are going on that testimony.

Essentially, your Honor, it is Boucher's position on this lead question, aside from U. S. v. Dornau, Judge Metzner's opinion, which says it is almost impossible to show leads, we say there is a whole new theory that we bring to your Honor's attention on the lead question, as such.

It is admitted in the government's papers that they had possession of Boucher's transcripts of August 1973 in their own files here in the prosecutor's office. It is not clear when they obtained those, but according to Mr. Von Stein's affidavit, they were at least obtained or read as early as August 1975.

In the government's papers, Mr. Wing's affidavit and Mr. Vizcarrondo's affidavit -- in Mr. Wing's, it is on Paragraph 7 and in Mr. Vizcarrondo's, it is in

Paragraph 12 -- they both talk about the fact that there were a number of discussions between the three of them as to the matters and questions that would arise in this trial.

If I can read from Paragraph 7, your Honor, Mr. Wing states: "In preparing this case for trial I have been very conscious of the fact that I had no idea what these defendants were going to say in response to the particular charges of this indictment, and I have discussed this particular problem with my colleague, Assistant U. S. Attorney Paul Vizcarrondo at some length.

"Because of this basic ignorance, I have made various efforts to ascertain from defense counsel what positions their clients would take at this trial, and I believe counsel for both defendants can confirm my efforts in this regard.

"I am sure that if I had read any testimony of Boucher's or King's relating to the issues in this case, I would not have felt myself so ignorant as to what they might testify about these matters.

"Accordingly, I can only conclude that I did not have any information either directly or indirectly from any of the defendants' so-called bankruptcy testimony that bears on any issue relating to the above-

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captioned indictment."

As I say, Mr. Vizcarrondo makes a similar affidavit stating that he and Von Stein and Mr. Wing discussed this case on a number of occasions.

We submit that when your Honor reads the transcript, which I have here and would offer in evidence, of the bankruptcy testimony, it covers every material item on the Mecom and Trueblood transactions, and by having it in their possession and having admittedly been read by somone so closely related to the prosecutor's table as Mr. Von Stein, who has been the attorney in charge of the SEC, they had a look-see into privileged communications, assuming immunity applied, and that we have a Sixth Amendment violation here.

I think it is analogous to those attorney-client invasions which this circuit and other circuits have found to be the basis for dismissals and without prejudice being shown. In some circuits it is a per se rule. This circuit hasn't gone that far.

I am giving your Honor the appropriate citations on this issue.

THE COURT: Don't you think you have given me enough appropriate citations by now, these mountains of

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papers on this and everything else?

Go ahead.

MR. MALONEY: That concludes my position, your Honor.

THE COURT: Do you want to add to that, Mr. Armstrong?

MR. ARMSTRONG: No, your Honor. I think on the question of the leads, the leads issue, which I believe with respect to Mr. King is really the only issue, in that there is no question that he did testify at his own personal bankruptcy and that immunity does flow from such testimony; I believe our position is basically the same.

It is Mr. Von Stein's working closely with the prosecution that is really the key to the matter.

There is one additional thing with respect to our position, your Honor, and that is that we say the original testimony taken of Mr. King at his bankruptcy hearing was taken under circumstances where, for whatever reasons, the government as a whole just did not take any steps whatsoever to protect that testimony in the manner as required, really, by Mr. Wilson of the Justice Department at the time.

Under the circumstances of the circus atmosphere

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that resulted in his testimony, that it was virtually impossible for word of that testimony at a very early stage not to have gotten out to all of the interested people in this case, the KRC people and everybody, and at this stage of the game going back and asking people whether they got this information or that information from things that were being talked about daily and reported in the press is really impossible.

THE COURT: Does the government want to address any of that or should we go ahead with Mr. Von Stein?

MR. VIZCARRONDO: No, your Honor. We have Mr. Von Stein available for examination by the defendants, if they wish.

THE COURT: All right, let's ask him to take the stand.

T H O M S O N V O N S T E I N, called as a witness in behalf of defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MALONEY:

Q Mr. Von Stein, by whom are you employed, sir?

A The SEC.

Q How long have you been so employed?

A Seven years.

Q In what capacity?

A Attorney, staff attorney.

Q You are admitted to practice before some state court?

A That is correct.

Q Where, sir?

A California and Colorado.

Q Can you tell us when you were assigned to the case of King and Boucher?

A June 1973.

Q Had you had anything to do prior to that time with any matters relating to King and Boucher, to the best of your recollection?

A I had been assigned in 1971 to investigate IOS, and in the course of that investigation, I became familiar with the fact that there had been dealings between King Resources and John King and IOS and Fund of Funds.

Q Whom did you talk to in 1971?

A About what?

Q About King or Boucher or KRC?

A Really nobody, because we were not investigating them. The investigation focused on events that occurred

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after they were out of the picture.

Q After you were assigned to this case in June 1973, did you have occasion shortly thereafter to speak to Mr. Pfeiffer, counsel to the KRC bankruptcy trustee?

A Yes, I did.

Q Do you remember when you saw him for the first time?

A I believe it was September or October 1973.

Q Was that the first time you talked to him?

A I think I called him on the phone before I saw him in person.

Q Can you give us just the general nature of your discussions with him in September 1973?

A I was seeking his authority, cooperation, to go to the King Resources premises to search for documents that would be relevant to the investigation.

Q Let's stop there for a second.

The investigation that you were assigned to in June of 1973 was --

A It may have been the beginning of July.

Q Beginning of July, 1973, was focused, was it not, on the Mecom-Trueblood transactions that have evolved in the indictment and trial of this case?

A No, it was not.

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Q It wasn't those initially?

A That is correct.

Q What was it initially?

A Initially it was an investigation into the total relationship between King Resources Company and Fund of Funds, as described, if you will, in a letter that the attorneys for the successors in interest to Fund of Funds had written to the judge in the bankruptcy hearing in Denver.

Q Is that Mr. Schwartz?

A Schwartz or Mensch wrote the letter.

Q The basis, do you now know, or did there come a time when you learned that the basis of their letter was the Frederickson and the Marriott matters?

A I don't believe so.

Q When did you focus on the Mecom and Trueblood transactions for the first time?

A It was a gradual narrowing of a number of transactions or types of transactions that I could have, but it would be September, October, 1973.

Q After you talked to Mr. Pfeiffer?

A While I was in Denver. I took a couple of trips to Denver.

Q Was it subsequent to talking to Mr. Pfeiffer?

A It was a gradual affair, and I was talking with him a lot and -- I am sorry, it is difficult to say if it was -- you know, there was no specific time.

Q You say you talked to him initially in September, 1973. Did you see him on a regular basis thereafter?

A Usually when I was in Denver I would have occasion to see him.

Q How many times do you say you saw him in the fall of 1973 or talked to him?

A Half a dozen to a dozen times.

Q Is it fair to say the subject matters of your conversations concerned the Mecom and Trueblood transactions?

A It was one of the subjects.

Q Did you have occasion to discuss with Mr. Pfeiffer at this time the fact that he had already taken testimony in August 1973 from Rowland Boucher?

A I don't remember that being discussed at all.

Q Were you aware that he had taken testimony from Rowland Boucher?

A No. Not then.

Q When did you learn about that for the first time?

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A Some time in 1974.

Q When in 1974?

A I don't know.

Q Early in 1974, middle of 1974?

A I don't know.

Q Before the indictment was filed in this case?

A It would have had to have been, yes.

Q Where did you learn it from?

A That he had taken the Fifth? I don't recall. Probably Mr. Pfeiffer.

Q Did you discuss with Mr. Pfeiffer Boucher's testimony?

A No.

Q Why not?

A I don't know why not.

Q Weren't you interested in what the defendant was saying under oath about the very transactions that you had now by this time focused on?

A When Mr. Pfeiffer did inform me, he said he was -- I believe he said he was taking depositions in his Lark case, and I had no interest in the Lark case.

Q We are talking about 1974, when you say you believe from Pfeiffer you learned that he had taken Boucher's testimony. The testimony we are talking about

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was taken in 1973, was it not?

A Let me see what you are referring to.

MR. MALONEY: May these be marked, your Honor?

xx (Defendant's Exhibits A and B marked for identification)

MR. MALONEY: May the record reflect that A and B for identification are the transcripts supplied to me by the U. S. Attorney's Office just prior to this hearing, which purport to be the examination of A. Rowland Boucher by Mr. John S. Pfeiffer, Counsel to the Trustee, taken on August 6 and 7, 1973.

Is that not so, Mr. Von Stein?

A That is correct.

Q When or who do you know obtained possession of those transcripts for the U. S. Attorney here in the Southern District?

A I believe I did.

Q When did you obtain them?

A I believe it was October of 1975.

Q Did you read them?

A I did.

Q When did you read them?

A Some time after -- I don't know precisely. Some time after they were sent to me. I believe that

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when I would get documents from Mr. Pfeiffer, I wouldn't always get them right away. I could ask for a number of documents and then he would send them some time later, so I -- so it was some time after that.

Q You think it was some time in the fall of 1975 that you read it?

A That's most likely.

Q I take it from your affidavit submitted in this case which, to refresh your recollection, I think you said in the affidavit you first read it in the summer of 1975 --

A That is correct.

Q You also said in your affidavit you read them, and I think your words were, reading from Paragraph 9 of your affidavit of May 1976, Mr. Von Stein, "In the summer of 1975 I recall reading some of the testimony of Boucher as questioned by counsel for the trustee for KRC, John Pfeiffer. I do not recall anything relevant to the indictment in it."

Did you so state in an affidavit?

A Sure did.

Q Is it your testimony that after reading A and B for identification in the fall of 1975, your memory tells you or told you that it concerned nothing but

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irrelevancies?

A I reread them last night, and I saw things in there which -- there are some pages in there which are relevant to the issues in the case, yes.

When I wrote my affidavit, however, I did not recollect anything.

Q I believe in a letter dated May 1976 from Mr. Wing, that after some discussions with you, he believes his office came into possession of the trustee's report, Mr. Pfeiffer's report, in the fall of 1973, is that correct?

A I believe so.

Q That trustee's report is dated October 10, 1973 by Mr. Pfeiffer.

Does not that report, among other matters, question the bona fide nature of the Mecom transaction?

A Yes, it does.

Q In the fall of 1973, did you read that report?

A I don't recall, but it is possible.

Q Did you have discussions with Mr. Pfeiffer in the fall of 1973 concerning the bona fide nature of the Mecom transaction?

A Yes, I did.

Q In the course of those conversations, did he

discuss Boucher's participation or lack thereof in the Mecom transaction?

A I don't believe so.

Q Boucher's name never came up in your discussions with Mr. Pfeiffer vis-a-vis the Mecom transaction?

A I am pretty sure that is right.

Q Yet Boucher was one of your targets, was he not, right from the beginning in 1973 when you were assigned this case?

A In the order of investigation, he and King and Cowett are mentioned. The order of investigation is not focused toward the Arctic transaction. It is focused toward the total relationship.

Q But there came a time, and maybe we are repeating ourselves, that you did focus on the Arctic transactions and the Mecom and Trueblood transactions specifically, did there not?

A That's right.

Q When did that occur?

A Some time in September or October of 1973.

Q Accepting that, you are telling us that that was --

A Perhaps later.

Q Much later?

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A Because I was looking at many areas. In my early transcripts you will see that I was looking at many different things.

Q Nevertheless, it happened some time you believe in the fall of 1973, at least?

A I'd say so.

Q You never asked Mr. Pfeiffer about Boucher's participation in these transactions, specifically Trueblood and Mecom?

A I believe that is accurate.

Q And he never volunteered anything?

A I don't believe he did.

Q Did he inform you in or about this time or at any time about having gone in 1972 to see Judge Winner and the U. S. Attorney in Colorado concerning the arms length nature of the Mecom transaction?

A I don't think so.

Q He has never discussed with you at any time that --

A He discussed that with me in the last week or so, the last two weeks, when I called him about that.

Q That was the first time?

A Yes, that's the first time I was aware of that April 1972 approach.

Q If we can --

A I had heard a month or so ago from Mr. Kelly thathe was on the receiving end of some sort of a call some time, which I now think is that time.

Q April 1972?

A That's right.

Q Mr. Kelly has told you that he believes in April of 1972 he had a call from the U. S. Attorney concerning the Mecom-KRC transactions?

A He is unable to pinpoint the time, but he recalls a call on that subject.

Q Did he tell you what he did?

A Yes.

Q What did he do?

A He told me that he had informed Mr. Treese that he had some awareness of that and that --

Q And then what?

A That's all. I mean, that he had some awareness of it.

Q Did he tell you what actions, if any, he took in April of 1972 after his conversations with Mr. Treese, the U. S. Attorney in Denver, Colorado?

A No, he didn't.

Q Are you aware of any actions he took?

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A No.

Q There came a time, did there not, Mr. Von Stein, when you learned about Mr. Boucher's testimony in Dallas, Texas in the summer of 1971?

A Yes.

Q Where did you learn that from?

A From Mr. Wing.

Q From Mr. Wing?

A Yes.

Q Do you know where Mr. Wing found it out from?

A You are asking for double hearsay.

Q Yes. Double hearsay.

A Mr. Wing told me that he had been informed that Mr. Boucher had lied to the court down there, and that I should check it out.

Q Did he tell you where he had been informed and by whom?

A An acquaintance.

Q When did you have this conversation with Mr. Wing?

A I don't know if it was by phone or in person, some time in the fall of 1975.

Q The fall of 1975. Did you go down? Where did you go to take a look at this so-called perjured testimony?

A The U. S. District Courthouse in Denver.

Q Did you read that testimony?

A I believe I did.

Q Does that testimony reflect that there was a representative of the SEC at those Dallas bankruptcy hearings, a Mr. Waldeck?

A It does.

Q Prior to taking Mr. Boucher's testimony in 1971, there was colloquy, was there not, in that transcript that under that proceeding he may be immunized?

Do you recall that discussion on the record?

A I am aware it is there.

Q Did you read that entire transcript?

A No.

Q Why not?

A I don't know if it was time or it didn't seem interesting or why.

Q You took some excerpts from it, did you not?

A Yes.

Q Were those the excerpts attached to Mr. Wing's answering papers in this motion?

A I think that's right.

Q Those four or five pages dealt with the Arctic leases, did they not?

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A Yes.

Q And in fact it talked about -- that's Mr. Boucher's testimony we are talking about, right?

A I believe so.

Q He talked about or speculated in that transcript about what he believed the valuation in 1971 of the Arctic properties of KRC were worth, did he not?

A I read that again also last night, and I don't think he did testify as to what the value was.

Q Wasn't he queried about the value of the KRC holdings in 1971, specifically Arctic leases, in that transcript?

A Yes.

Q He was?

A He was.

Q Did he make efforts to speculate what he thought the property value was?

A I thought he was attempting not to.

Q Whatever he was talking about, they were talking in a range of $50 million or less, were they not, in trying to come up with a figure in 1971?

Can I refresh your recollection?

A Yes, sure. I mean the record is the record.

MR. MALONEY: May the record reflect I am

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showing him Mr. Wing's affidavit with attachments in this case, attached to which are certain pages, seven pages purportedly from his examination in 1971, at a meeting of creditors in Dallas, Texas, at which time he was the additional trustee.

Q Is that correct, Mr. Von Stein?

A I believe so.

Q Does that refresh your recollection that there was a discussion in trying to ascertain by the creditors the value of the Arctic leases?

A I don't want to quibble.

Is Mr. Gesas counsel for the creditors?

Q Mr. Gesas was counsel for the bankrupt corporation. Mr. Nichols was with the creditors.

Isn't it fair to say that there was some discussion and some attempt in that transcript to evaluate KRC's Arctic leaseholdings in their testimony in 1971?

A Yes. They were trying to get Mr. Boucher to give an opinion.

MR. MALONEY: I submit, your Honor, the transcript will speak for itself insofar as the point I am trying to make.

Q How thick or how lengthy was this transcript you read in Colorado, which was the testimony of the

Dallas, Texas bankruptcy proceedings?

A I don't recall.

Q Can you estimate for us how big it was, how thick it was?

A If there are page numbers on this thing here -- this is page 100 -- I can't say.

Q Was it more than one day's testimony?

A I don't recall that.

Q But it was lengthy, was it not?

A I don't know. I can't recall.

Q Do you recall the subject matters that were covered insofar as they relate to the Arctic, IOS, or Trueblood and Mecom?

A The only subject matter that I recall was the wells in Texas and where their wells in Texas were, I believe.

Q Before proceeding here this morning, you heard me read Mr. Wing's affidavit here concerning his great desires to find out what the defendants' positions would be in the trial of this case.

Do you remember reading that paragraph, Paragraph 7 before you?

A Yes.

Q How long have you been physically located in

the U. S. Attorney's Office here in the preparation and trial of this case?

A Since September 1974 I have been here on and off.

Q Has this been most of the base of your operations since September 1974?

A No.

Q Where has it been?

A Washington.

Q Have you had a number of discussions with Mr. Wing and/or Mr. Vizcarrondo about the prosecution and trial of this case?

A Yes.

Q In fact, they are innumerable, wouldn't it be fair to say?

A Whenever I am here.

Q Were there a number of occasions that you had occasion to listen to Mr. Wing or Mr. Vizcarrondo and participate in discussions about what the defendants' positions would be in the defense of this case?

A Yes.

Q That was true before indictment as well as after indictment, was it not?

A Yes.

Q Did you volunteer your views about what the defendants' position might be in the trial of this case?

A Probably.

Q Having reviewed that Exhibit A and B before you, which is the Denver, Colorado 1972 transcript of Rowland Boucher, can you now say that his position in those transcripts would have been irrelevant to those discussions with Mr. Wing and Mr. Vizcarrondo?

A Rereading them last night makes me think that if I had paid a great deal of attention to them, that they would have been.

Q Can you in good conscience say, after having read them in the summer of 1975, that it did not enter into your discussions with Mr. Wing and Mr. Vizcarrondo?

A Yes.

Q You can say it did not?

A That is correct.

Q Did anybody else read those transcripts, A and B for identification?

A I don't know.

Q By the way, you recall, do you not, that on the eve of trial when Mr. Boucher made this motion, Mr. Wing discovered those transcripts in the irrelevant file? Do you remember that position taken by the

government?

A I don't remember it, but I think that is right.

Q Do you know how they got into the irrelevant file?

A No.

Q Was anybody else handling this case besides you as the SEC man in charge?

A I was the only SEC man.

Q Have you any idea --

A I take that back. Mr. Dingwall worked on it and Mr. Maronne for a short time.

Q When that transcript was discovered at or about that same time, about a week later, Mr. Wing also discovered Mr. Pfeiffer's trustee report of October 1973, do you remember that?

A Yes.

Q You say you received that as early as the fall of 1973, right?

A I might have.

Q Where was that filed?

A I don't know.

Q Where was it found when these motions were made just prior to trial?

A I don't know.

Q Who found it?

A I think Mr. Wing found it.

Q Who found the transcripts?

A I think Mr. Wing.

Q How many file cabinets are there in Mr. Wing's office on this case?

A About eleven, total.

Q How is it that Mr. Wing found the trustee's reports and these transcripts on his own; did he go through all eleven file cabinets?

A I don't know.

Q After he found it --

A I think he went through everything, yes.

Q After he found it, did he have discussions with you about these transcripts and the trustee's report?

A Yes.

Q What were those discussions?

A Did we get them --

Q What did you tell him?

A What I am telling you.

Q What else did he ask you?

A He asked me if I had read them.

Q You answered that you had?

A Yes. I am sure I said I did.

Q What else did you say about that?

A I think he asked me if he had ever read them.

Q What did you say to that?

A I said I didn't know.

Q Did he ask you what was this doing in the irrelevant file?

A No. I would have remembered that word.

Q Did he ask you why he had not been shown these transcripts of a defendant about to go to trial that he was anxious to find out his position on?

A No, he did not.

Q Did Mr. Vizcarrondo ask you?

A No.

Q Mr. Boucher's other testimony in other places was filed some place else, was it not?

A I don't know what you mean. I assume, but I don't know.

Q Was there a file for Mr. Boucher's SEC testimony here in the U. S. Attorney's Office?

A Yes.

Q These transcripts were not in that box, were they?

A They were not in that file drawer, I don't

believe.

Q Why not?

A I don't know.

Q Did you ever have discussions with anybody on your staff concerning the possible immunity that might attach to these transcripts in Dallas, Texas?

A To these particular transcripts?

Q Yes.

A Not until the issue arose by your papers.

MR. MALONEY: Please mark these two exhibits.

xx (Defendant's Exhibits C and D marked for identification)

Q I show you Exhibit C for identification and I ask you what that is, sir.

A That's a Xerox of notes of a telephone conversation that I had with Mr. Pfeiffer.

Q Does it have a date on it or can you ascertain the date?

A It doesnot have a date on it. I can't really ascertain a date. I think it was some time in 1974.

Q That's in your handwriting, is it not?

A Yes.

Q Can you read the first line?

A Yes. The first word should be "Pfeiffer

taking depos in Lark, Quand, Harper, Lowry, Boucher later, not King."

Q Can you explain what you meant by that note on the top?

A No. Well, not precisely, but Pfeiffer informed me he was taking depositions in the Lark case, and I think the names are the individuals involved.

Q In taking depositions in the Lark case, what do the words "Boucher later" mean?

A I am not sure.

Q Does it mean he is going to take his deposition later?

A It could.

Q A and B for identification are those Lark depositions, aren't they?

A I think so.

Q In the preamble to A or B, it says he is going to examine him on Lark and then on other matters, isn't that correct?

A That is correct.

Q As a matter of fact, it is only the first 40 pages of 143 pages in which he concerns himself with Lark?

A OK.

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Q And the rest of it concerns itself with IOS, the Arctic leases, and matters tried in this case, does it not?

A I thought Lark was more than 40 pages. I know Part 2 is mostly about the IOS takeover, and there are a few pages at the end of Part 1 about Consolidated and Mecom.

Q Just so we can tick off subject matters, and if you need page references to refresh your recollection, I will give them to you, from those transcripts, those transcripts discuss in Mr. Boucher's interrogation the Acapulco meeting, does it not, with respect to IOS?

MR. VIZCARRONDO: Your Honor, we object to this. The documents speak for themselves.

THE COURT: Sustained.

Q Going back to Exhibit 3 for identification, can you read the bottom line which is in your handwriting?

A "Coffey to testify King signed 1/23/70 after being asked."

Q The line before it, sir?

A "Boucher house, 600M, 250M, IRS trouble, banks have asked for foreclosure," I believe.

Q You say you cannot recall when you had this conversation with Mr. Pfeiffer for which you made the

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notes on Defendant's Exhibit C for identification?

A That is correct.

Q Was it before indictment?

A Probably.

Q I show you Exhibit D for identification, which is really one page of a multipaged matter.

First, can we generically identify what this document is? What is the whole document?

A D is Xeroxes of notes of telephone conversations that I have had in this case.

Q Referring specifically to the page which has been marked Exhibit D for identification, there is a typewritten note at the bottom, is there not?

A Yes.

Q What does it say?

A "Boucher affidavit in support of bankruptcy with exhibits."

Q What does that mean?

A I don't know.

Q You prepared this document?

A Yes. Well, I didn't -- yes; I didn't do the typing.

Q If you can recall, when did you type in that line?

A I didn't do the typing, but I first met and talked with Claudia Thames in the summer or fall of 1975.

Q She was Mr. King's secretary and testified at this trial?

A That is correct.

Q How does that get us to this note at the bottom of Exhibit D for identification?

A I don't know. These are notes of calls that I made. That was a note of a call that I made.

Q You don't know who you called?

A I think I called Mrs. Thames.

Q Is it fair to say that the subject of the conversation --

A On this particular line you are referring to?

Q Right.

A Yes.

Q It concerned itself with Boucher's bankruptcy, with exhibits?

A I am not sure.

Q You don't know what that note means?

A I am sorry, I don't. I have looked at this recently and there is an awful lot I can't understand now of those notes.

Q You were interested in the Lark transaction,

were you not, in preparation for the trial of this case?

A I personally? No.

Q Who was?

A Mr. Vizcarrondo.

Q Did he discuss the Lark transaction with you?

A I don't believe so, or if I did, it was the sketchiest of conversations.

Q Your criminal reference report, doesn't it discuss the Lark transaction?

A Yes, it does.

MR. VIZCARRONDO: Your Honor, since the Lark transaction was kept out of evidence at trial, we think that this line of inquiry is irrelevant.

THE COURT: Why is it relevant, Mr. Maloney?

MR. MALONEY: Just to focus on the same two exhibits, of which a portion of it discusses the Lark transaction and he would have had to go back to these two exhibits for the preparation of that report.

THE COURT: All right.

MR. VIZCARRONDO: He could ask that question.

Q Do you understand the area of inquiry, Mr. Von Stein?

A Yes, I do.

Q In your criminal reference report about the

Lark transaction, did you obtain information from this testimony of Boucher's in connection with that reference report?

A Absolutely not.

Q Did you get any from Mr. Pfeiffer?

A Absolutely not.

Q You never discussed Lark with Mr. Pfeiffer?

A Well, he did tell me at one point that he was taking depositions in the case, but the substance of it I didn't. In my criminal reference report all I do is quote from the Denver SEC's criminal reference report on the Lark transaction. I made no investigation of Lark at all, and I don't know too much about it.

Q You know Mr. Waldeck of the SEC located in Chicago?

A I have talked to him.

Q Did you ever talk to him about the Dallas, Texas bankruptcy testimony of Mr. Boucher taken in 1971?

A I talked with him in preparation for the affidavit which I submitted. I had not talked with him earlier.

Q Did you ever in the course of your official duties in the preparation of and investigation of this case receive any communications from any government source

about Mr. Boucher's testimony in any of the two bankruptcy proceedings, Dallas, Texas or Denver, Colorado?

A Could you say that again?

Q In the course of your official duties in investigating and preparing for the trial of this case, did you ever receive any communications from any government source as to Mr. Boucher's position or testimony--

A As to the substance?

Q As to the substance.

A No.

Q How about nongovernment sources, other than Mr. Pfeiffer?

A My answer is the same. My contact with that was solely at the suggestion of Mr. Wing and my knowledge of it was-- my knowledge of its existence was from that source.

Q In your conversation with Mr. Pfeiffer, using Exhibit C for identification to refresh your recollection, which refers to a phone conversation at some time in the past concerning Pfeiffer taking depositions from Quand, Harper, Lowry, Boucher later, did you, as a representative of the government, attempt to stop him from continuing his bankruptcy investigation?

A No.

Q And, indeed, when he concluded his investigation a month or so later, you asked for a copy of his report, did you not?

A I don't believe so.

Q How did you get it?

A I believe I got it in October of 1975 when I was at King Resources.

Q Mr. Wing's letter of May 19, 1976, which I shall read for the record:

"Mr. Von Stein tells us that he believes he obtained the October 10 report and the trustee's Application No. 65 from Mr. John Pfeiffer, who is counsel to the trustee of King Resources, some time in the fall of 1973" --

A That is correct. I thought you were talking about this.

Q No, no, I am talking about the trustee's report.

A I thought you were talking about the transcript which is Exhibits A and B.

Q The trustee's report. You got it in the fall of 1973?

A I think I did.

Q You asked for it?

A I think so.

Q Going back to Exhibit C for identification and the last line, would you read that last line again?

A "Coffey to testify King signed 1/23/70 after being asked."

Q Mr. Pfeiffer, the counsel for the trustee, is telling you that in a phone conversation, right?

A I believe that's right.

Q That line refers to that portion of this trial, does it not, concerning the signing of a rep letter or a refusal or reluctance to sign a rep letter by John King in January 1970, isn't that what that note refers to?

A I don't know about refusal, but the fact of signing, yes.

Q And the fact that Coffey witnessed it?

A I don't know.

Q Read it again, if you would.

(Pause)

A That does not change things.

Q The point I am trying to make, Mr. Von Stein, is that you obtained from Mr. Pfeiffer information that Coffey could testify about the circumstances surrounding King's signing of the rep letter of January 1970 from

Mr. Pfeiffer?

A That is correct.

Q Do you know whether Mr. Pfeiffer talked to other people at the SEC?

A About the King-IOS case?

Q About the issues in this trial.

A I am not aware of anybody else he talked to.

Q When you would go to Denver, Colorado, you would make a point of visiting Mr. Pfeiffer, would you not?

A If necessary.

Q You visited him on a number of occasions, did you not?

A Yes.

Q And he gave you access to his documentation from his investigation, did he not?

A No, not necessarily. Investigation of what?

Q His bankruptcy investigation?

A No.

Q He didn't give you access to his records?

A I asked for access to the files of KRC, and he did give me access to particular files of KRC, but in terms of his legal files in his office, that was a separate matter and I do remember seeing one thing of that,

which was Trustee's Application 65.

I believe I saw that very early in the game.

Q Did any other SEC personnel communicate with Pfeiffer, that you know of, by phone or as your representative or with you?

A Yes.

Q Who is that?

A Mr. Kelly.

Q That is the same Mr. Kelly who testified in this trial?

A Right.

And perhaps Mr. Rome.

Q He is another SEC investigator?

A That is correct.

Q They consulted with Pfeiffer in your absence as well, did they not?

A When they would consult Mr. Pfeiffer, as far as I know, it would be when I had asked Mr. Pfeiffer for a particular document and he would say, "Well, can you send somebody over to pick it up?" And I would then call Mr. Kelly or one of Mr. Kelly's superiors and say, "Could you send somebody down or over to pick up X document or X telephone record" or something like that.

Q Getting back to A & B, the transcripts, is that

what could have happened? Did you send Mr. Kelly over?

A I don't think so.

Q You don't know how you got these?

A I think I do know how I got them.

Q How did you get them?

A I believe I saw them in a box of transcripts that were being made available to other attorneys in the room that Mr. Pfeiffer uses at King Resources Company, and one of the attorneys out there was an attorney representing the Bank of New York. I believe I saw them when I saw him at King Resources Company, and that was October 1975.

MR. MALONEY: I have no further questions, your Honor.

BY MR. ARMSTRONG:

Q When were you transferred to Washington?

A I was never transferred to Washington.

Q You started your employment with the SEC in Washington?

A Correct.

Q When was that?

A 1969.

Q You have been assigned to the Washington office

throughout your period of service with the SEC?

A That is correct.

Q When you were assigned to this case, who else was assigned to it from the SEC?

A Robert Laprade.

Q Was he assigned to it from the beginning?

A Yes.

Q Did he work on it full time?

A He never worked on it.

Q There are a lot of names on the formal order of investigation, aren't there, including all the people out in Denver, and a lot of people, right?

A Half a dozen.

Q Mr. Kelly is on that list --

A Half a dozen to a dozen people on that, as officers designated to take testimony, yes.

Q But in fact who worked on the case?

A I did.

Q Who else?

A Until well after the indictment, only me.

Q You were aware, were you not, sir, of the Denver investigation that was going on at that time into the activities of Mr. King?

A You mean the Denver SEC?

Q The Denver SEC.

A It was finished by that time.

Q The grand jury was in progress at that time?

A I believe that's right.

Q The SEC, it is fair to say, had a continuing interest in the matter, didn't it?

A That is correct.

Q Who were the SEC people who had been working on that case and who continued to work -- first of all, who had been the ones who had worked on it during the investigative stage, to your knowledge?

A Jack Kelly, Joe Krys, Frank Rome and perhaps another accountant whose name I don't know.

Q Did you talk to these people in the course of your investigation?

A Yes.

Q Frequently?

A On occasion. I don't know what you mean by frequently. It wasn't --

Q Did you turn to them for information?

A Yes.

Q Here you are starting a case against John King and they have been working on it for a long time. Wouldn't you naturally go out there and say, "Hey, fellows, help me out"?

A Yes.

Q Did you in fact?

A Yes.

Q Did they make whatever files they had available to you? Did they make their files available to you?

A They sent me their criminal reference report and they sent me digests of testimony that they had taken in their investigations, and I read the criminal reference reports. They didn't have very many files by that time because they had all bee shipped over to the U. S. Attorney's Office, nor was I asking for them because I wasn't investigating what they were investigating.

Q Who in the U. S. Attorney's Office was working on that case?

A Alan Spurgeon, John Kobiachi, a guy named Terry Wiggins, I believe, and I believe somebody else.

Q Did you talk to those gentlemen in the course of your investigation?

A I talked to Mr. Spurgeon.

Q Only Mr. Spurgeon?

A I also talked to Kobiachi, but not much. I didn't talk to Mr. Spurgeon very much either.

Q What is very much?

A Half a dozen phone calls.

Q You never went to the U. S. Attorney's Office to look at files that they had?

A Yes, I did.

Q When was that?

A I don't recall.

Q Do you recall what it was you were looking at?

A I think I looked at notes they had taken of an interview with Mr. Jowett. I think I went there for that purpose. I don't recall what else I was looking for.

Q That was only on one occasion, is that it?

A I think I had been there more than once. I know I had been there more than once.

Q How many times?

A Throughout the whole course of my assignment half a dozen to a dozen times.

Q Did you ever talk to Caroline McNeil while you were out there?

A I talked to her by phone.

Q What was the subject of your conversation with Caroline McNeil?

A I was trying to get some notebooks of Hy Gernert

who--

Q Could you state for the record who Mr. Hy Gernert is?

A He was an assistant to John King.

Q In a secretarial capacity, wasn't he?

A I thought he was more than a secretary, but I don't know for sure.

Q Will you go ahead with the conversation that you had with Caroline McNeil?

A I was attempting to obtain notebooks which I had been told that he kept, and theywere either made exhibits in the IRS bankruptcy,matter when the IRS was suing John King for taxes -- I think that's where I was told they were.

Q Did you locate those notes?

A No, I did not.

Q Did Mrs. McNeil purport to know where they were?

A I forget. Her name was given to me as somebody who might know, as far as -- or what was necessary to get them, something like that.

Q In connection with the tax case, you were aware of the interest of the IRS and the Department of Justice specifically in Mr. King and his tax matter, is

that right?

A Yes.

Q There were people who were specifically working on the tax case involving John King?

A That's right.

Q Who were those people, to the best of your knowledge?

A There was Jerry Shea, Tom Boerschinger, Mrs. McNeil, John Moats and an agent I believe or a man in the audit division by the name of Bill Sims.

Q You were aware at that time, were you not, that the tax people had access to and indeed were involved in the bankruptcy proceedings of John King?

A Yes.

Q You were aware at that time, were you not, of the immunity provisions that protected his testimony in the bankruptcy proceedings?

A I was aware of the law generally, yes.

Q Generally? What was your understanding of the law at that time, Mr. Von Stein?

A It was my understanding that a man in a bankruptcy situation who is compelled to testify would get use immunity from the testimony he gave under compulsion.

Q How did you translate this in terms of your

own investigation? What precautions did you take yourself in proceeding in an area where in fact there was a personal bankruptcy?

A I never -- I did not read any compelled testimony.

Q Compelled testimony?

A Or any testimony of John King until the material you furnished us.

Q How do you define use immunity?

A Use immunity, as I understand it, is any testimony or leads from that testimony cannot be used against the person who gives the testimony in a subsequent criminal proceeding or a concurrent criminal proceeding.

Q Would you interpret that, sir, as forbidding you from talking to someone who had in turn talked to someone who had read the testimony or had been present at the proceedings?

A About the substance of the testimony, yes.

Q About the substance of the testimony?

A Yes.

Q As opposed to the matters discussed in the testimony?

A If I call Mrs. McNeil and say, "I am trying

to find a notebook that I understand is part of your case," I do not believe that talking to her is skating on thin ice.

Q I am talking about your calling Bob Hulsey and your asking him about the circumstances of the case and Bob Hulsey has in fact talked to someone else who testified before-- someone else who had been exposed to the King testimony.

Are there any steps that you would take -- do you feel that you are in danger at that point of coming in contact with tainted material?

A I am sorry. Could you say that one more time?

Q John King testifies in his bankruptcy hearing and let's say Bill Coffey learns about that testimony, reads the testimony -

THE COURT: Would you give an example of that John King testimony that you have in mind, any such testimony that anybody heard of from somebody, so I have a concrete picture of what things we are talking about? Give us an example from King's testimony and give the witness an example. It is too abstract for me and not helpful. Find some of the King testimony that you have in mind and let's be specific, because we are not talking about abstract rules of law. We are talking about a

real case and a real man and real testimony. Please do that.

MR. ARMSTRONG: Your Honor, our position is that the testimony we have laid out at some length in the affidavit that we made available to you did cover matters that were covered in the trial.

THE COURT: Look, I want you to take one of those examples and make the question concrete. You have got it. Get it, take it, use it. That's all I am asking you to do.

MR. ARMSTRONG: All I am trying to find out, your Honor, is what his procedure was in talking to these people. I don't know the people that he talked to, Judge. Our position is that he talked --

THE COURT: You gave him an example of Hulsey. Find an example of any testimony that makes this meaningful to me in this case so that I can understand the testimony. I am not going to rule on Mr. Von Stein's procedures as an abstraction. I want to rule on what he did.

Please follow my request. Give me an example of what you say you are asking him about so I can know what it means.

(Pause)

Q Sir, in the testimony in the SEC transcript of Mr. Hulsey that you took on October 22, 1973, in the beginning of that testimony, you made inquiries of Mr. Hulsey as to his exposure to the bankruptcy proceedings, and he said that he had read a newspaper article, he had read newspaper articles about the bankruptcy proceedings.

My question at this point is did you feel that his exposure to newspaper articles about the bankruptcy proceedings threatened your investigation?

A Could I see the transcript, please?

MR. VIZCARRONDO: Your Honor, I object to the question. It seems to be rather vague and unspecific.

THE COURT: Yes.

Mr. Armstrong, I will try to do it once more. I have not made myself clear to you. Then I am just going to let you go on as you like. I want you to find, so I can see the concrete point of this, if there is any, a specific item of any King testimony in the bankruptcy proceedings in terms of which you are asking about this connection once or twice down the road. I don't want to study this as an abstraction. This is a question of whether there were leads or uses of a forbidden kind.

If it turns out that there really is not

anything that you know of in King's testimony that Hulsey could have been infected by from the newspapers or otherwise, I don't care about this question. That's what I was trying to get you to do. If you cannot do it, don't do it and go on as you like.

I sustain the objection to the last question. I was just suggesting to you that that might be a useful way for you to proceed.

MR. ARMSTRONG: Your Honor, we do not contend that we are going to be able to show that any particular piece of testimony given by Mr. King at his bankruptcy hearing was transmitted to the government through a particular witness.

What we are showing is that he did give testimony, and we have laid it out and made it available to your Honor, that I think quite apparently relates to matters that relate to Mr. Lowry and his practice with respect to dealing with guarantee agreements, which relates to the Arctic transactions themselves, which also related to, as I recall, the Lark and NOPI transactions, which while they did not come into the trial was certainly relevant to the investigation and could have led to other leads.

That is all laid out in our affidavit. We

don't pretend to be able to say that any particular piece of information got to Mr. Von Stein through any particular witness. We maintain that having shown the testimony and having shown the existence of immunized testimony, it is the government's burden to show it did not.

THE COURT: That's fine, but in that case don't use up your time and mine questioning him about abstractions. If you say it is the government's burden and they have not met it, good. If you think they have met it and you have to counteract that, let's be concrete and specific. But I don't think these generalities about his procedures are of much utility.

MR. ARMSTRONG: I will move on, your Honor.

THE COURT: Yes, I think you really ought to move on.

MR. ARMSTRONG: Our point, which I think we have made in our papers and I was trying to explore, is that Mr. Von Stein's procedures quite apparently were not designed to deal with this problem.

In that circumstance, when he didn't even ask certain witnesses whether they had been exposed reflects an attitude toward the bankruptcy testimony which, however innocent it may have been, was inadequate to protect

it. We would just like to show that procedure. I won't dwell on it, your Honor.

Q I would like to ask, however, without getting into specifics, if it is all right, you have read our papers and we set forth, based on the 3500 material that was turned over to us,a number of interviews of people conducted by you, where you did not make any inquiry apparently at all at the beginning of the interview as to whether there had been exposure to the bankruptcy testimony.

I can go get them, if you want, but, to save time, you concede that there were a number of such interviews, is that correct?

A That is correct.

Q Can you tell me why you didn't make inquiries of those people?

A If you could give me the particular person you have in mind, I might be able to.

Q Mr. Trueblood.

A The question is why did I not give him --

Q You questioned him without making any inquiry of him as to whether he had been exposed to the bankruptcy testimony.

As I understand it, sir, that was the procedure

that Mr. Kelly and the other people at the SEC out in Denver had set up for questioning of people who might have been exposed to such testimony.

A I don't know for sure, but I do believe that either before -- it may have been before the testimony-- Trueblood had indicated to me he had not talked with King in a long, long time. That may be the reason, but otherwise, I don't know.

Q He said that he had not talked to King in a long, long time, and he said that off the record, and that was sufficient for you not to pursue it any further?

A I don't know precisely why I didn't ask him about his exposure to the bankruptcy, that is correct.

THE COURT: Let me ask you, Mr. Armstrong, do you have any knowledge in support of this motion that Trueblood had read or heard the King bankruptcy testimony?

MR. ARMSTRONG: Your Honor, I believe that he certainly was exposed to it through the press and through conversations. I have not made specific inquiry of all of these people to determine whether in fact they have. I just have not been able to.

Q Mr. Carr?

A I don't know why I didn't.

Q Mr. Mecom?

A Several of the people that I did talk to had indicated that-- everybody that I remember that I did ask the question of indicated they had learned nothing. It may have been that I assumed that Mecom had not learned anything from King's bankruptcy proceedings.

Q Mr. Dippo?

A I don't know.

Q Mr. Reidy?

A I don't know that either, I am sorry.

Q Mr. Beesley?

Let's save some time. Here are the names listed on page 4.

A Beesley was-- I can't say why I didn't, if I didn't.

Q In Paragraph 10 of our affidavit, I have the names listed. If you could just look at them and state whether --

THE COURT: At this point, do I really care about reasons why and why not any further? If I do, go ahead and ask him. It just seems to me that some time is used more valuably than other time.

MR. ARMSTRONG: I have tried to ask the question in general to --

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THE COURT: He gave you the answer.

THE WITNESS: The reason I can't give you specifics is because there are some people whom I interveiwed who I was pretty sure had no exposure, and those were people, you know, who had no interest in it. So I would say that the reason why I did not ask some people was because I was pretty sure it would be fruitless.

Q Just very quickly, does that apply to any of the remaining names on page 4 of my affidavit of July 1976, Paragraph 10?

A I can't say.

Q In the tax case, what were your contacts with Mr. Boerschinger, do you recall?

A They were by telephone. They were when he was-- right before he was leaving the government. I think I asked him about the Gernert notebooks.

Q Do you recall visiting Mr. Boerschinger in Chicago?

A I do know that I never did.

Q You never did?

A That is correct.

Q Did you ever meet with him personally?

A I never did.

Q Do you recall inquiring of him as to the status

of the tax case?

A I probably did.

Q Do you recall his directing you to Denver at that time and saying,"Go out and see Mr. Moats or the other people out there?"

A No, I don't.

Q Do you deny that that happened or do you --

A It probably did not. I think at the point I got into it, into the tax case, everything had been decided and the records were in Washington.

Q Everything had been decided?

A There had been a trial on a certain phase, and they were -- a certain phase had already been tried and papers were in Washington.

Q Specifically directing your attention, sir, to September-October, 1975, do you recall talking to Mr. Boerschinger at about that time and asking him about the status of the tax case and being referred out to Denver?

A No.

Q Do you deny that that happened?

A I think he left-- I think he wasn't in the government then.

Q That's right. He was not in th government then.

A I don't think it happened, but I am not sure.

Q Did you ever talk to Mr. Boerschinger after he left the government, to your knowledge?

A Yes.

Q You did?

A I have called him in Chicago.

Q I don't mean in connection with these motions now. I mean back in 1975,before the trial. Did you talk to Mr. Boerschinger at any time after the period of time he left the government?

A I don't recall.

Q You say you don't remember whether you did or not?

A That is correct.

Q What is your best recollection, sir?

A I do remember taht he gave me -- I did call him just before he left the government because he gave me the phone number where he was going to be, so that was very soon before he left the government. Apart from that, I --

Q You just have no recollection?

A I don't know what my calls to him may have been.

Q If you did contact him after he left the government, can you think of any reason that you would have had to contact him?

A I tried to call him a couple of days ago --

Q I mean except in connection with his connection with this matter and this motion.

A I don't know why I would have called him.

Q In any event, in September or October of 1975 you did go out and were given access to certain records in the possession of the IRS, is that right?

A That's right.

Q Mr. Moats gave you certain documents?

A That's right.

Q What were those documents, sir?

A I think there were some briefs, news clippings--

Q Some briefs?

A Yes.

Q Prepared by whom?

A I saw a statement prepared by King's counsel, I saw briefs prepared by the government. I am not sure if I saw briefs prepared by King's counsel. I know I saw a statement of some sort prepared by King's counsel.

Q Pardon me. Did you take copies of these documents?

A I got some, yes.

Q As you go through describing the documents, would you say which ones you recall getting copies of and

which ones you did not?

A I don't recall specifically what I got copies of. The ones that I have described, I think that I have or the government here has copies of that.

Q This was a statement by King's counsel?

A Yes.

Q And a brief by the government?

A I think so. I also have seen some legal arguments before a judge at a hearing.

Q Legal argument; you mean a transcript of legal argument?

A Transcript where attorneys for the government and attorneys for King are making argument.

Q Before the bankruptcy judge?

A I believe so.

Q Do you know what proceeding that was?

A I believe in King's tax trial.

Q It was the tax trial-- before the bankruptcy judge, but having to do with King's tax matters?

A That is correct.

Q Do you know where these materials are?

First of all, what other materials did you find in the tax office?

A I don't know for sure.

Q Did you go through a clipping file at that time?

A Yes.

Q There were clippings there that related to the King bankruptcy, is that correct?

A That is correct.

Q You ordered those-- I mean you got copies of those?

A That is correct, or the originals. Either one.

Q But you don't remember what other documents you saw when you were in the IRS office out in Denver?

A I have described for you what I do recall.

Q But I am saying there could have been other documents that you don't recall, is that right?

A Obviously, yes.

Q Were you asked to search through the files here to find any of the documents that you might have collected when you were at the tax offices in Denver?

A No.

Q You have never been asked to look for those documents?

A That is correct. I don't think so.

Q Do you know where they are now?

A I think so.

Q Do you know where this brief is and all these other -- I don't think we have them, do we?

MR. WING: No. To save everybody's time, we have a ton of stuff relating to the tax trial which we never thought had anything to do with bankruptcy immunity. It includes briefs, transcripts. I guess it also included the news clippings from which some were turned over in connection with the bankruptcy hearing, there were news clippings relating to King's private bankruptcy. The tax trial is a civil action trial. It was incorporated into the bankruptcy proceedings.

It was not, at least as far as we know, part of Mr. King's bankruptcy immunity in any way.

We have no objection to turning it over, if they want to look at it. But I don't think it is relevant.

Q Do you recall having conversations with the people in the tax case about the immunity problem?

A No.

Q Why did you feel that the clipping file that you found in the IRS specifically dealing with the bankruptcy hearings was relevant to your investigation?

A I am not sure I felt that.

Q But you took the trouble to get those documents

and have them sent back to Mr. Wing's office.

A It wasn't much trouble. News clippings are frequently good sources of information.

Q Were you aware in collecting those clippings that a heading that would say "King's Bankruptcy Hearing," that there would be any problem, or did you think there was any problem at all with your reading those news clippings?

A I don't recall what I thought at the time.

xx (Defendant's Exhibit E marked for identification)

Q Mr. Von Stein, I show you Defendant's Exhibit E for identification, which is a document consisting of seven pages, and I ask you if you can identify it.

A Yes, I can.

Q What is it?

A It is a document that I picked up after my search of files in Ferney-Voltaire.

Q When?

A In June or July of 1975.

Q What is it?

A You want me to read the heading?

Q I'd like you to give me your interpretation of what that document is.

A I will read the heading.

Q If you will, sir, if you don't have any interpretation, you can just say so. I am asking you if you have an interpretation as an SEC investigator of what you thought that document was when you took it out of the files.

A I am not sure I -- when I asked for it to be copied and sent to me, I don't believe I had any opinion as to what it was.

Q You didn't know what it was?

A That is correct. I see the name King, and when I was getting documents in Ferney-Voltaire, I didn't read anything. I was just going through and picking out documents which had the name King on them or Arctic or King Resources, or something like that.

Q Did you read "Creditors Committee" in the heading here?

A Yes, I did.

Q You know what a creditors committee is?

A I know that King Resources had a creditors committee.

Q It is in connection with a bankruptcy proceeding, is that correct?

A I know that King Resources' creditors committee

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is not in connection with the bankruptcy--

Q It does not flag it at all for you that this might conceivably--

A Yes, it does flag it, that this might conceivably be in King's bankruptcy.

Q Looking at this thing now, do you know what it is?

A I believe it is notes of an examination of John King by Harry Sterling, counsel for the creditors committee.

Q Do you actually remember getting this document out of the files?

A No.

Q Do you have any recollection of it at all at the time you got it out of the files?

A No.

Q You have no recollection?

A Not until it came up in connection with the motions --

Q When Mr. Wing came to you and said, "I found this in the files," and he showed it to you, when you looked at that document, did you recollect it? Did you say, "Oh, yes, I recollect I got that document out of the files in France"?

A I recollected that because it had the little tag on the bottom of all the documents that I got.

Q I am not saying, sir, whether you reconstructed it from a mark that you put on it. I am saying, when you looked at the document, did you remember anything about your getting it?

MR. VIZCARRONDO: Your Honor, I am not sure what the relevancy of the question is, so I will object.

THE COURT: I will allow it.

A No.

Q Then how do you know whether you read it or not at the time?

A I do know that after I got back from Ferney-Voltaire, that I did look at the documents that I had asked to be sent to me.

Q So you did read the document once it arrived here in the United States?

A Probably.

Q It is incomplete, is it not? It starts on page 20, apparently, because the fifth page is 25, and it is obviously a numbered series of items starting with 78?

A That's true.

Q Do you know where the rest of that is?

A I have no idea.

Q Can you state for certain that you did not order the rest of that?

A If I ordered it, they would have probably sent it.

Q But I am saying, sir, we didn't find this until just before trial, right? Mr. Wing found it in a file marked, I believe, "King Personal"; is that right?

A OK.

Q Did you know that that was in that file?

A No.

Q Mr. Wing states in his affidavit that that was a file that was used to contain stuff that might be useful in cross-examination, but you didn't know it was in that file.

A That is correct.

Q What I am saying is, sir, can you state for sure that there were not similar notes or digests that you (a) saw in France, and (b) had sent here to New York?

A Pretty sure but not absolutely sure.

Q What makes you sure?

A What makes me pretty sure is that if I had seen it and it had the name King on it, I probably would have asked for it, and they would have Xeroxed it and sent me

a copy.

Q What I am suggesting, sir, is that it is possible, is it not, that this document could have come here to the United States and could be somewhere in the files right now and just has not been located or it could be misplaced?

A That could be checked out because two copies were sent to the United States: one to me and one to the liquidators. They would have --

Q The liquidators have a set of everything that was sent?

A That is correct. If they can locate more, then maybe there was more.

Q In any event, you read this document?

A I believe I did.

Is there anything in there in particular you are thinking about?

Q I will ask the questions for now, all right?

Do you recall whether or not you talked to anybody as a result of this document back when you got it?

A I probably did not.

Q Probably did not?

A That is correct.

Q Why "probably did not"?

A Well, the person I would have talked to would have been Mr. Wing, and we have discussed this particular document after it came up, and he has no recollection of it. Since I was the only person on the SEC side concerned with this and he was on the U. S. Attorney's side, he is the person I would have talked to about it.

Q You took no notes with respect to this document?

A That is correct.

Q How do you know that?

A Because I have no notes and I --

Q You have retained to this date all of the notes that you ever took in connection with this case?

A No. But I have retained all notes of documents, and as of April 1975, I didn't digest any more documents.

Q Why?

A I had a hell of a lot of other things to do.

Q Turning to item 87 on the first page of this, Exhibit E, it says "Robert Wrath, note, no effort to collect payment, J.M.K. does not think there are any assets on which to collect."

It says "no effort to collect payment." Do you recall reading that item at that time and what it

meant to you?

A No.

Q At that time had you looked into the Wrath situation, I mean when you first got it?

A Wraff, yes.

Q You knew all about it? You collected all the evidence?

A I knew what I knew.

Q Addressing your attention to 97, "Farmers and Merchants Bank of Tulsa, May, 1971, charge J.J.K.'s account $5,500 for payment on a note of Colorado Corp. No recollection by J.M.K."

A Pardon me. Did we put the check marks on there?

Q No, no, I put the check marks on. Those are not your check marks.

Do you recall taking note of that at the time?

A No.

Q You read this through. You don't recall taking note of anything in here that was of importance at all when you got it, is that right?

A The Wraff thing, when I read it yesterday that struck me as being a decent point. Again, I don't know what that 97 is about at all. I don't understand it.

Q Do you have any knowledge, sir, or any

recollection of how that document that we have been talking about, Exhibit E, got into the files at IOS?

A No.

Q Did you make any inquiries at the time?

A No, I did not.

Q Is there any notation that you have or any knowledge that you have of whether you made inquiry at the time about how it got there?

A I know I did not because there is nobody there to make inquiry of.

Q There was nobody who was a custodian who had any knowledge?

A There was a custodian, but he didn't -- so far as I knew or I didn't believe he had knowledge of why things were there. I mean, you know, IOS was three thousand people and then it was one guy or two or three guys. I know it was in the legal files.

Q You remember that that was from the legal files or is there a notation?

A Because those were the files that I searched. Most of the files in the room that I searched or virtually all the files were the legal files.

Q Do you have any idea who prepared those notes?

A No.

Q In your investigation, nothing has come up that leads you to have any idea who prepared them?

A Absolutely nothing.

Q You are certainly sure, for instance, that you didn't prepare them?

A Absolutely.

Q You turned over a tape to us last night or Mr. Wing turned over a tape with a man named Richardson who was an accountant, and you had had --

A That is correct.

Q The last sentence on the tape is a statement by Richardson, something to the effect that "I will tell you something if you don't repeat it," and then there is a click. If he was talking about going out to have a beer or something, I am not particularly interested in that. But do you recall what he said?

A We got that out of a file where there were some handwritten notes.

Do the handwritten notes give any clue?

THE COURT: No, no, he is just asking you if you recall what he said. The answer is yes or no.

THE WITNESS: I don't remember.

THE COURT: Next question.

Q Do you recall the conversations between

Mr.Sporkin and Mr. Schwartz that initiated this investigation? Do you remember being told about them?

A I may have been there, but I don't recall being there, but I recall being-- I recall learning the substance of what Schwartz and Mensch were telling Mr. Sporkin.

Q It was shortly thereafter, after that meeting, that you were assigned to the case?

A That's right.

Q On the basis of what Schwartz and Mensch had told Mr. Sporkin, that is what prompted it, right?

A That prompted my initial assignment to find out more from Schwartz and Mensch.

Q Did you in fact do that?

A Yes.

Q Did you talk to them about the facts that they had gathered in their investigation?

A Yes.

Q In detail, right?

A Well, I don't know how much detail they had at the time.

Q Don't you remember?

A They had a fairly detailed letter which they sent us a copy of.

Q A letter to a judge?

A That is correct.

Q But they also had collected files and they had collected information, had they not?

A Yes. But they had just gotten into it, and they just had taken over a -- they had taken over from another firm which had done some digesting of documents.

Q But whatever they had, whatever information they had, you talked to them about it and you got it?

A Yes.

Q Do you remember talking at that time to a man named John Phillipps?

A Shortly thereafter, yes.

Q He also was associated with him, is that correct?

A Yes.

Q You talked to him about the substance of the case, is that right?

A Yes.

Q You got from him whatever information he may have had?

A At one point when I was out there he made his files available to me.

Q And he discussed the case freely with you and what he knew about it?

A Yes. He was free -- freely discussed it, yes.

Q Did you ever ask him whether he had had contact with the King personal bankruptcy?

A I don't know.

Q Were you aware of the fact that he was in fact bankruptcy counsel for Global and participated in the bankruptcy hearings?

A Yes.

Q You were aware of that?

A Yes.

Q At the time?

A Yes.

MR. VIZCARRONDO: Excuse me, your Honor. I wish Mr. Armstrong could clarify his question. Which bankruptcy are you referring to?

MR. ARMSTRONG: I have been informed by Mr. Schwartz--

THE COURT: No, no, just what you are asking him about. You are asking him about the Global bankruptcy proceedings?

THE WITNESS: No.

MR. ARMSTRONG: No. As I understand it, Judge, among other things, he was a bankruptcy lawyer who was working with Schwartz on matters pertaining to bankruptcy.

THE WITNESS: Global was a creditor in the King Resources Company bankruptcy. He was counsel to Global.

Q But you had no discussions with Mr. Phillipps at that time about any problems you might have in talking to him about information he had gleaned in the bankruptcy proceedings?

A I don't know.

Q I'd just like to get a few more names just for the record and ask you what your contact with these people has been with respect to information about the King case.

James Treese, United States Attorney in Denver, Colorado.

MR. VIZCARRONDO: Your Honor, I object to the relevancy of that question, unless Mr. Armstrong can demonstrate what Treese's connection with the John King personal bankruptcy was.

THE COURT: Mr. Armstrong, why is it relevant?

MR. ARMSTRONG: There is a specific relevance, your Honor, that does relate more directly to Mr. Boucher's testimony, and that is the --

THE COURT: Objection sustained.

MR. ARMSTRONG: Your Honor, there also is a general relevancy, in this sense. We contend that the

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bankruptcy proceedings out there were conducted in such a disorganized fashion that everybody out there -- we have heard that the bankruptcy testimony and the exhibits were just kind of left around for anybody to look at.

We would just like to simply ask the man --

THE COURT: I am not going to let you explore that. I have trouble with that contention. I keep seeing it in your papers, and somebody who is going to claim immunity says not a word about any protection for this, or whether he thinks it ought to be safeguarded in any way and it is broadcast over the radio and in the newspapers and left lying around, and years later we are going to spend as much time as a long trial took to interrogate people about everybody who may have come into contact with this utterly unprotected material. The hearing has to have a limit, and I am limiting it.

Objection sustained. Next question.

MR. ARMSTRONG: In the light of that limitation, your Honor, I can shorten things considerably.

Q Do you recall ever having any conversations with John McCann or John Tobin of Donovan Leisure?

A Yes.

Q Did either of them discuss with you their exposure to the bankruptcy hearings if any?

MR. VIZCARRONDO: Objection.

THE COURT: Sustained. I told you I hoped to conclude by noon. We were quite late, as you know. Are you almost through?

MR. ARMSTRONG: First of all, I apologize --

THE COURT: Don't apologize. Let me know how close to being finished you are.

MR. ARMSTRONG: I am very close. I thought the time was one o'clock, though, Judge.

THE COURT: In any event, if you are close to finished, we don't have to debate what the time is.

Why don't you go ahead?

Q Really just one more question, Mr. Von Stein.

In your questioning of 80, 100 people, whatever it was, that you questioned, did you ever stop questioning somebody because they told you that they had been exposed in one way or another to ghe bankruptcy hearings?

A Nobody ever told me--

THE COURT: Answer yes or no.

A (continuing) I son't believe I did.

MR. ARMSTRONG: I have no further questions.

THE COURT: Do you have anything, Mr. Vizcarrondo?

MR. VIZCARRONDO: I have a very few questions, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. VIZCARRONDO:

Q Mr. Von Stein, Mr. Maloney pointed out that in the Section 167 report that John Pfeiffer, attorney for the trustee prepared, he questioned the bona fides of the John Mecom transaction and the Arctic sales.

You read Mr. Boucher's Section 167 transcript recently, have you not?

A Yes, I did.

Q Is there anything in there, Boucher's testimony, that questions the bona fides of those transactions?

A No.

Q To your knowledge, did Mr. Pfeiffer ever institute a suit in behalf of King Resources against anyone on the basis of those Arctic sales?

A He petitioned the bankruptcy court to declare the Arctic contracts executory, I believe, and he was successful in that. If that is suit, so be it.

Q As far as you know, that was the extent of his concern with the matter?

A As far as I know.

Q When you began your investigation that resulted in this indictment, what matters besides the Arctic sales

did you look into generally?

A I looked into whether or not other frauds had been committed by KRC on FOF in the nature of selling to Fund of Funds dry holes and whether or not they had sold them properties without disclosing the full facts about those properties, whether they had-- whether or not they performed work that they charged Fund of Funds for, things of that nature.

Q Approximately how many documents have you read in connection with your investigation since you instituted it?

A Around five thousand, give or take a thousand.

xx (Government's Exhibit 1 marked for identification)

Q I show you Government's Exhibit 1 for identification.

Can you identify it?

A Yes.

Q What is that?

A That's the report of the investigation of Fund of Funds and King Resources.

Q Who prepared that report?

A I prepared it and much of it is quotes from other documents.

Q This is what is called a criminal reference report, is it not?

A It is effectively, yes. I mean, it is the basis -- the factual basis for the SEC turning a case over to the Justice Department.

Q When did you prepare it?

A In August and September, 1974.

Q In this report do you set forth the bases and testimony, documents and whatever that you obtained, the information that is contained in this one hundred some-odd page report?

A Yes.

Q Did you read this report again yesterday?

A Yes, I did.

Q After reading it, did you determine whether any of the information that is in there was obtained from the bankruptcy testimony of John King or Rowland Boucher?

A I determined that there was nothing in there from -- about any such bankruptcy proceeding.

Q That includes the very short synopsis of the Lark transaction that Mr. Maloney referred to, is that correct?

A That is correct.

MR. VIZCARRONDO: The government offers this

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as an exhibit for this hearing.

MR. ARMSTRONG: I kind of assumed, Judge, that when we marked them for identification, it was received in evidence without formally offering them.

THE COURT: Let's assume that now. Everything that was marked is in evidence before the Court. Is that agreeable?

MR. VIZCARRONDO: Yes.

I think all the items are items we submitted in our papers previously.

MR. ARMSTRONG: I think they all are.

THE COURT: OK.

Q Mr. Von Stein, you testified that you obtained a number of documents from IOS files in Ferney-Voltaire, is that correct?

A That is correct.

Q When did you do this?

A In June of 1975.

Q Can you describe briefly the circumstances under which you obtained those documents?

A IOS was at that time being administered by court-appointed liquidators, and we asked them for access to the IOS files, and they granted it.

Q How voluminous were those files that you went

through?

A Fifty or sixty file cabinets.

Q How much time were you given to search through them?

A Well, I was given as much time as I needed, but I took five days.

Q Can you describe briefly the procedure that you had to follow in searching those documents, searching through those files?

A I paper-clipped that which I wished to get copies of. I just went to the file room and just started going through all the files.

Q Then after you pulled documents out and paper-clipped them, you asked to have them Xeroxed --

A I would paper-clip them, put them on a cabinet or desk, and they Xeroxed the paper-clipped documents.

Q Did you ever make any effort to obtain any transcript of John King's testimony in his personal bankruptcy proceedings?

A No.

Q Also, can you describe briefly the various matters that Mr. Mensch and Mr. Schwartz wanted the SEC to look into when they went to the SEC in 1973?

A They had a whole range of complaints against

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King Resources: The dry holes thing I mentioned before, overpriced properties, they were alleging that King Resources had I think skimmed one million dollars off the top of properties that were sold from Colorado Corporation through King Resources to Fund of Funds, that King Resources was overcharging, King Resources and/or Colorado Corporation were overcharging Fund of Funds in unconscionable amounts.

Q In other words, the allegations concerning the Arctic transaction was one of just numerous allegations that they brought to the SEC's attention, is that fair to say?

A Yes. It was not their principal concern, by any means.

MR. VIZCARRONDO: We have no further questions.

MR. MALONEY: Very briefly, your Honor.

REDIRECT EXAMINATION

BY MR. MALONEY:

Q I am trying to establish to the best of your ability the date of Exhibit C for identification.

Referring to that first line again, it says, "Pfeiffer taking depositions in Lark," presumably from Quand, Harper, Lowry, Boucher later, not King.

Could you say whether or not this didn't take

place before or after you first met Mr. Pfeiffer?

A I think it was after I met him, but I can't say.

Q Let me try to help you.

A Pfeiffer might know.

Q August, 1973 is Boucher's testimony. This exhibit says Boucher will later be deposed, is that right?

A I don't know.

Q Isn't that in your handwriting?

A It says, "Boucher later."

MR. VIZCARRONDO: Your Honor, this was asked and answered.

THE COURT: Yes. It is not proper re whatever you are doing. It was a very brief interrogation by the government. You and Mr. Armstrong were at this for two hours.

MR. MALONEY: I am going to be very quick.

Q For the record, Mr. Vizcarrondo asked you, after reading the testimony last night, did you find anything in there about Boucher questioning the bona fide nature of the Mecom transaction. I think essentially that was the question.

Do you recall that?

A Yes.

Q You said no?

A Yes.

MR. MALONEY: I am not going to clutter the record up, your Honor. I just wanted to make page reference for your Honor to read which will show a strong suggestion to the contrary.

THE COURT: You can brief them.

MR. MALONEY: Brief them later, you mean?

THE COURT: Yes.

MR. MALONEY: That concludes my examination of this witness, your Honor.

The only other thing--

THE COURT: Wait just a second.

Does anybody else have anything for Mr. Von Stein?

MR. ARMSTRONG: Just a question or two, your Honor.

EXAMINATION BY

MR. ARMSTRONG:

Q When you say, reading the criminal reference report, Mr. Von Stein, that there is nothing in there that you got from the bankruptcy proceeding, you necessarily have to limit that, do you not, to your own personal reading of the testimony?

A Personal reading of --

Q Of any bankruptcy testimony?

A It is to the best of my knowledge, there is nothing in that criminal reference report that comes from testimony in the bankruptcy proceeding.

I made as many references to source materials as I could in a criminal reference report, and if I had seen Boucher's statement in his denying he knew anything about the Mecom deal, I would have probably put it in there.

Q When you talk about sources, in your affidavit you give what purports to be the sources of all the witnesses that came to trial.

That does not purport to be an exact recollection of when you first heard of each of these witnesses, does it, Mr. Von Stein, realistically speaking?

A Give me a specific.

Q Any of them. You go through all the government witnesses and you say, "This is the source, this is my source."

Are you saying that it is not possible, just as a general matter, it is not possible that you had heard about these witnesses from other sources at different times than you mentioned?

MR. VIZCARRONDO: Objection to the form of the

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question.

THE COURT: Sustained.

It is not going to help me, Mr. Armstrong.

MR. ARMSTRONG: I have no further questions.

THE COURT: All right. Thank you.

(Witness excused)

THE COURT: Mr. Maloney, what were you going to say?

MR. MALONEY: In light of Mr. Von Stein's testimony about Mr. Wing telling him about alleged perjured testimony in Dallas, Texas' bankruptcy hearing and sending him forthwith out there, but him not knowing who had told Mr. Wing that, I would like a statement on the record, not necessarily under oath, from Mr. Wing about those circumstances of learning about the bankruptcy testimony in Dallas, Texas, who told him, what was the substance of that conversation surrounding sending Mr. Von Stein out to examine that bankruptcy testimony.

MR. WING: I was going to make such a statement, your Honor.

THE COURT: Yes.

MR. WING: I have a friend who is a lawyer by the name of Donald Williamson, and on some occasion some time after the indictment was filed, I don't really

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remember when, some time in 1975, when I was talking with him about something completely different and he learned I was working on the King-Boucher case, he mentioned to me that he had represented somebody, and I have no recollection who, in connection with a motion to transfer venue, to change venue, and that he had examined Mr. Boucher on that subject at length.

My best recollection of what he was talking about was apparently there was some motion to transfer the King Resources bankruptcy proceeding from Dallas where perhaps they had made the initial filing back to Denver, and that Mr. Boucher and others had strong personal reasons or reasons why they wanted to keep it where it was, and the creditors thought that was going to give them an unfair advantage if they left it there, and they wanted to get it back to Denver. Or possibly vice versa. I don't really recall.

I recall this fellow Williamson told me that he examined Boucher at length about this transfer business, and that he thought Boucher had lied considerably and that he had cut him up considerably.

Williamson told me he didn't think there was anything about the Arctic there, but it would be helpful in getting some idea about getting Boucher as a witness

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and what he lied about on something basically that had nothing to do with our case, but just on his testimony.

On learning that, I asked Mr. Von Stein to try to get a hold of that testimony for me to read it.

He went to Denver, I guess, and said that he just couldn't get it or it was too voluminous or maybe he read through it.

In any event, he produced nothing back, and I never did get it. Apparently he came back with a few pages which did touch on the Arctic which we have turned over to the Court.

But that was not, at least at the time, my interest in getting it.

I also -- those are the facts as to why I sent Mr. Von Stein for that particular piece of testimony.

I can say that at the time I don't believe I had any awareness of Mr. Boucher being designated as a-- I forget the term in the statute --

MR. MALONEY: An additional trustee.

MR. WING: Whatever the statute says about getting the bankruptcy immunity coverage at all, and I had no thought at the time that some hearing on a motion for transfer of venue would have been something where immunity would have attached.

THE COURT: Anything else, Mr. Maloney?

MR. MALONEY: No, I think that does it, your Honor.

THE COURT: Mr. Armstrong?

MR. ARMSTRONG: No, your Honor.

THE COURT: All right. I think we have had a lot of paper in this proceeding, but perhaps we need a little more. I will give the defendants until 4:00 p.m. on Wednesday, August 25, to file any brief supplemental memoranda on this aspect of their motions that they may desire, and I will give the government until noon on August 30 to file any brief answering memorandum.

Then I will consider this motion submitted and proceed to its decision.

The only suggestion I have is that if the defendants think it may be useful, I would like them to indicate the nature of any specific uses or leads they think on the materials before the Court the government has failed to deal with adequately, or whatever the government's burden may be, and the nature of the resulting prejudice, if any, to the defendants or either of them.

You may conclude that this is a wrong question and that you don't have to make any such showing, and if

A 726

you so conclude, just tell me and I will take your papers on that basis. Or you may conclude it is a wrong question but you may want to treat it in the alternative, that is, assume it is a sound question and hear the answer, but, Judge, the question does not make any sense anyhow, or you may do whatever you like with it.

It is the only thing that occurs to me, because I have already indicated that there has been for me a certain measure of abstractness about a lot of the submissions in this connection, and very frankly, it does not seem to me that that quality was a useful one in support of the defendants' thesis on this motion. But I tell that to you so that if there is some misconception underlying my tentative reaction, whether of law or of fact, you will have an opportunity to deal with it.

Is there anything else this morning?

(No response)

THE COURT: OK. Then we stand adjourned.

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Thomson Von Stein	6	79	96	

EXHIBIT INDEX

	Identification	In Evidence
Defendant		
A	12	
B	12	
Government		
1	80	

A728

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA,

Plaintiff,

- against - 75 Cr. 70 (MEF)

JOHN M. KING and
A. ROWLAND BOUCHER,

Defendants.

- - - - - - - - - - - - - - - - - - x

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT KING'S MOTION WITH RESPECT TO HIS BANKRUPTCY TESTIMONY

This memorandum is respectfully submitted in support of defendant King's contention that the Government has failed to satisfy its burden to establish freedom from taint resulting from King's testimony in his personal bankruptcy proceeding.

In prior submissions to this Court, defendant King has established that: (1) between June 30, 1971 and March 11, 1976 there were approximately 32 sessions of the first meeting of creditors* in King's personal bankruptcy proceedings -- in the greater number of which Mr. King either testified or made statements; (2) King testified on at least 3 occasions in 1973 in

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* Transcripts for 4 of these sessions have already been provided to the Court. During the trial we obtained one other short transcript of a recent session of no consequence. Since the hearing on August 20, 1976, it has been learned (contrary to prior information) that an additional 6 transcripts have been transcribed, 3 of which are not in the court files. It is believed that the remaining 21 sessions have not been transcribed.

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proceedings under Section 21(a) of the Bankruptcy Act (11 U.S.C. §44(a))*; (3) all of King's testimony in these proceedings was given under an automatic grant of immunity in accordance with Section 7(a) of the Bankruptcy Act (11 U.S.C. §25) and; (4) the available transcripts show that King's testimony related to matters directly concerned with the subject matter of the charges against him in this case (see Armstrong Affidavit, May 11, 1976, pp. 3-12).

The Government has never contested these facts and, under the applicable law as set forth in King's memoranda of law previously submitted, once such facts are shown the burden then shifts to the Government to prove that its evidence is untainted by the immunized testimony. Kastiger v. United States, 406 U.S. 411, reh. denied, 408 U.S. 931 (1972). It is respectfully submitted that the Government, in its answering papers and in the testimony of SEC investigator Thomson Von Stein, has failed to meet its burden.

In its attempt to answer defendant's motion, the Government has limited itself almost entirely to an attempt to demonstrate that the witnesses called at trial were uncovered through leads independent of the bankruptcy testimony. Even if the Government successfully established this fact, it would be insufficient. The taint of which the court in Kastiger speaks is not limited to matters involving the location of witnesses

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* Transcripts of these proceedings have been provided to the Court.

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who testify for the Government at trial. The prosecutor is forbidden from using the testimony "in any respect" (406 U.S. 453, emphasis by the Court). In United States v. McDaniel, 482 F.2d 305, 311 (8th Cir. 1973) the court stated:

> "Such use could conceivably include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy."

The Government's presentation simply does not address itself to these possible uses of immunized testimony. The defendant has no obligation and, indeed, no way to demonstrate affirmatively, that such use was made of a particular portion of bankruptcy testimony relating to facts at issue in this case. It is rather for the Government to prove that it did not use the testimony in such fashion. The significant gaps in the Government's proof in this regard, coupled with the natural fading of recollection on the part of governmental personnel, has resulted in a clear failure of proof.

In addition to those areas previously discussed in papers submitted before the hearing on August 20, 1976, the Government has failed to show, in the following respects, that information from the bankruptcy testimony did not infuse itself into the preparation and conduct of the trial.

1. Documents: The Government has made no effort to demonstrate the source of the more than 360 documents

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introduced at trial. These documents, of course, represent only a small portion of the 11 file cabinets collected by the prosecutor (Tr. p. 26).* Insofar as these documents were used by the Government in preparing its case, interpreting evidence and making tactical decisions, it is incumbent upon the Government to show that none of them were obtained as a result of information gained directly or indirectly from exposure to the bankruptcy testimony or to individuals who gained their information from such exposure.

2. Tax litigation: As set forth in defendant's moving papers, various tax attorneys and investigators were present at and took an active part in Mr. King's bankruptcy proceedings. Messrs. Boershinger, Moats, Sims, McGovern, Silverstein, McDonald, and Ms. McNeil each had direct contact with King's bankruptcy proceedings and took an active part in them (see affidavits submitted by the Government in response to defendant's pretrial motions). The consistent position taken by all of these individuals in affidavits submitted to this Court has been that they were fully aware of the immunity provisions of the Bankruptcy Act and took all necessary steps to insulate their proceedings from the Justice Department and the Denver office of the SEC. However, Mr. Von Stein admitted in his testimony that in September or October of 1975

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* "Tr. p." indicates references in the transcript of August 20, 1976.

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he was given access to records in the possession of the IRS which included, at least, "a statement prepared by King's counsel ***, briefs prepared by the Government and news clippings" (Tr. p. 59.) He was "not sure" if he saw "briefs prepared by King's counsel" (Id.). He also did not remember what documents he copied stating "I don't recall specifically what I got copies of. The ones I have described, I think that I have or the Government has copies of that." (Tr. p. 60). He admitted having seen "some legal arguments before a judge at a hearing" which he "believed" was before the bankruptcy judge in Mr. King's tax trial (Tr. p. 60). He did not "know for sure" what other materials he found in the tax office (Tr. p. 60), and admitted that "obviously" there could have been other documents which he does not at this time remember (Tr. p. 61).

Thus, Mr. Von Stein admittedly had sought and gained access to the tax files which had been collected by those working directly with King's bankruptcy testimony. It is obvious that briefs prepared by the parties in such proceedings and transcripts of court sessions relating to them would contain facts reflecting the immunized testimony with which the proceedings were chiefly concerned. Since Mr. Von Stein does not even remember what documents he saw there is no way for him to satisfy the Government's burden of demonstrating that his awareness of the facts of the case was not enhanced by reference to tainted material.

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Indeed, the prosecutor himself stated, in the course of Mr. Von Stein's testimony, that "[W]e have a ton of stuff relating to the tax trial which we never thought had anything to do with the bankruptcy immunity. It includes briefs, transcripts." (Tr. p. 62). It is apparent that at the time Mr. Von Stein examined the material in the possession of the Government's tax lawyers, neither he nor the prosecutor had any idea that such material might include or be derived from tainted evidence. When Mr. Von Stein was asked "Do you recall having conversations with the people in the tax case about the immunity problem?" he answered, flatly, "No." (Tr. p. 62).

John D. Moats, attorney for regional counsel, Internal Revenue Service, Denver, Colorado stated in an affidavit dated May 18, 1976 that he was assigned as a tax trial attorney to the John King tax case in 1975, and was "contacted" by Mr. Von Stein in August 1975 (Moats Affidavit, p. 2). He does not give details of Mr. Von Stein's visit and does not even mention the fact that Von Stein came to his office and had access to documents under his control. He merely states "I can remember no information given to Mr. Von Stein as a result of John King's testimony in the bankruptcy proceeding." (Id., emphasis added). Thus, Mr. Moats makes no definitive statement (as he obviously could not) about documents to which Mr. Von Stein had access. The only documents mentioned in Mr. Moats' affidavit are "certain documents" which were

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provided pursuant to a "written request of United States Attorney Paul J. Curran" (Id.). As to these documents, Mr. Moats states that none "were obtained as a result of John King's testimony in the bankruptcy proceeding" (Id.).

The Government's inability to demonstrate that Mr. Von Stein's exposure to the tax fil was harmless is illustrated by his response to a question relating to news clippings relating to King's bankruptcy testimony which he collected at that time. He was asked "Were you aware in collecting those clippings that a headline that would say 'King's Bankruptcy Hearing', that there would be any problem, or did you think there was any problem at all with your reading those news clippings?" Mr. Von Stein's answer was "I don't recall what I thought at that time." (Tr. p. 63).

3. Notes of King Testimony: Mr. Von Stein also has little memory with respect to the circumstances under which he obtained, from IOS legal files in France, a portion of a set of notes of Mr. King's bankruptcy testimony (Defendant's Exhibit E). He acknowledges that the heading on the document "flag[s] it" so that it "might conceivably be in King's bankruptcy" (Tr. p. 65) and that at least one item in the document, when reread recently, "struck me as being a decent point" (Tr. p. 70). However, he did not recall getting the document from the files (Tr. p. 65) and had no recollection of it at all until it was discovered by the prosecutor in connection with this motion (Tr. pp. 65-66). He was "pretty sure but

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not absolutely sure" that he had not seen similar notes or digests in France and sent them to New York (Tr. p. 67). He "believe[d]" he read the document (Tr. p. 68) but "probably did not" talk to anyone about it (Id.). When asked whether he had collected all the evidence regarding the Raff transaction by the time he read the notes in this digest relating to it in this digest, Von Stein responded "I knew what I knew" (Tr. p. 70).

Thus, Von Stein admits exposure to a portion of a detailed digest of King's bankruptcy testimony but cannot give any details of what impact it had on him or whether he had similar access to the remaining portions. All we know is that the document somehow found its way into a file which was to be used in cross-examining King -- one of the uses specifically proscribed in U.S. v. McDaniel, supra, 482 F.2d at 311.

4. Global Resources Attorneys: According to the Government, the investigation of this case began in 1973 when lawyers for Global Resources Inc. ("Global") approached the SEC with information they nad gathered in their investigation. Mr. Von Stein testified that he had talked to these attorneys, had access to their files and talked freely with them regarding whatever information they had (Tr. pp. 73-75). One of the lawyers was John Phillips, who was counsel to Global, a creditor in the King bankruptcy proceedings (Tr. pp. 75-76). Mr. Von Stein was aware, when he spoke to him, that Mr. Phillips

participated in these proceedings (Tr. p. 75) but did not know if he had any discussions with him about problems arising from immunized testimony (Tr. p. 76). While no claim is made that any specific instance of exposure to bankruptcy testimony on the part of Mr. Phillips led to information used by the prosecution, Von Stein had free access to the files and information gathered by attorneys whose work product was necessarily affected by the bankruptcy proceedings in which they were directly involved.

Conclusion

As discussed in previous submissions, the Government's procedures in protecting Mr. King's bankruptcy testimony when it was given were inadequate if not non-existent and Mr. Von Stein's procedures in protecting himself from taint were equally deficient (he could not give reasons for failing to warn witnesses of the possibility of taint (Tr. pp. 53-56) and could recall no instance when he ceased questioning a witness upon learning of his exposure -- direct or indirect -- to immunized testimony (Tr. p. 78)). The bankruptcy testimony available so far clearly shows that matters were discussed directly relating to the evidence at trial and 27 other transcripts have yet to be examined. There were numerous points of contact between the

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Government, chiefly in the person of Mr. Von Stein, and documents and individuals derived from or exposed to the bankruptcy testimony. The Government has not satisfied its burden under the statute and the applicable cases to negate the inference of taint.

Dated: August 25, 1976

Respectfully submitted,

BARRETT SMITH SCHAPIRO & SIMON
Attorneys for Defendant John M. King
26 Broadway
New York, New York 10004
(212) 422-8180

Of Counsel:

Michael F. Armstrong
Warren H. Colodner

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA,

Plaintiff,

- against -

JOHN M. KING and
A. ROWLAND BOUCHER,

Defendants.

75 Cr. 70

AFFIDAVIT OF SERVICE

- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

James Singleton , being duly sworn, deposes and says that he is over the age of 18 years, is not a party to this action, and on the 25th day of August, 1976, he personally served the within Supplemental Memorandum in Support of Defendant King's Motion with Respect to His Bankruptcy Testimony by hand delivering true copies thereof to the Honorable Marvin E. Frankel, United States District Judge for the Southern District of New York, U.S. Court Housa, Foley Square, New York, New York; Clerk of the Court, United States District Court for the Southern District of New York, U.S. Court House, Foley Square, New York, New York; John R. Wing, Esq., Assistant United States Attorney, U.S. Attorney's Office, One St. Andrew's Plaza, New York, New York; and Andrew J. Maloney, Esq., Maloney, Viviani & Higgins, 630 FIFTH AVENUE ~~1290 Avenue of the Americas~~, New York, New York.

James Singleton

Sworn to before me this
25th day of August, 1976.

DONALEE ROBERTSON
Notary Public, State of New York
No. 31-4601159
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires March 30, 1977

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v -	:	75 Cr. 70 (MEF)
JOHN M. KING and A. ROWLAND BOUCHER,	:	
Defendants.	:	

GOVERNMENT'S SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO THE DEFENDANTS' MOTIONS BASED ON THEIR BANKRUPTCY TESTIMONY.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

PAUL VIZCARRONDO, JR.
JOHN R. WING
Assistant United States Attorneys,
Of Counsel.

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JRW:ma

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

- v - : 75 Cr. 70 (MEF)

JOHN M. KING and :
A. ROWLAND BOUCHER,

Defendants. :

- x

GOVERNMENT'S SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO THE DEFENDANTS' MOTIONS BASED ON THEIR BANKRUPTCY TESTIMONY.

The memoranda submitted by the defendants following the hearing held on August 20, 1976, on their motions based on their bankruptcy testimony do not add materially to their earlier arguments, and still do not even attempt to refute the Government's showing that the evidence it presented at trial was obtained from sources wholly independent of either defendant's bankruptcy testimony. Nevertheless, there are several arguments made and facts asserted in their papers that bear comment and correction.

A 741

JRW:ma

1. In the defendant Boucher's memorandum, reference is made to the first line of Defendant's Exhibit C, undated notes by Mr. Von Stein of a conversation with John S. Pfeiffer, attorney for KRC's Trustee in bankruptcy. The line reads: "Pfeiffer -- taking depos in Lark, Quand [sic], Harper, Lowry-Boucher later -- not King." Mr. Von Stein testified that he believed the conversation referred to in Exhibit C occurred in 1974. Boucher asserts that Mr. Von Stein must be in error because the only deposition Pfeffer took of Boucher concerning the Lark transaction was the August 1973 Section 167 examination, and the notes indicate that Pfeiffer had not yet taken Boucher's deposition at the time of the conversation. Mr. Pfeiffer, however, has told the Government that he was referring in that conversation to depositions he was taking or contemplating in the civil lawsuit he filed in 1974 based on the Lark transaction, and that he believes, therefore, the conversation occurred in 1974. Although Mr. Pfeiffer at one time contemplated taking Boucher's deposition in that lawsuit, he never did. The depositions that Mr. Pfeiffer took of William Quan, Jean Harper and Timothy Lowry in

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JRW:ma

the Lark lawsuit are dated April 22, 1975, April 21, 1975, and April 23, 1975, respectively.* Thus, it is apparent that Mr. Von Stein testified accurately when he stated that his conversation with Mr. Pfeiffer probably occurred in 1974.**

2. Boucher's memorandum correctly states that the KRC Trustee's Section 167 report questioned the bona fides of the Mecom transaction. It does not explain, however, how any portion of Boucher's allegedly immunized testimony could have contributed to that portion of the report. Indeed, in an affidavit by John S. Pfeiffer, dated August 4, 1976, submitted to the Court as Exhibit A to the August 9, 1976, affidavit of Michael F. Armstrong, attorney for the defendant King, in reply to the Government's response to the defendants' post-trial motions, Mr. Pfeiffer states:

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* Quan and Lowry were also examined in the KRC reorganization proceedings, pursuant to Section 21A of the Bankruptcy Act, on July 18, and 23, 1974, and July 16, 1974, respectively.

** Boucher's memorandum also contains this stunning non sequitur at pages 3-4: "[Neither] Von Stein . . . nor anyone else in Government to his knowledge, made any efforts on behalf of the Government to stay the bankruptcy investigation." The memorandum does not point out by what authority the Government could have had private litigation to which it was not a party stayed, especially prior to the filing of the indictment in this case.

A 743

JRW:ma

> "9. The Trustee made his report to the Reorganization Court pursuant to Section 167 of the Bankruptcy Act on October 10, 1973. I drafted the portion of that Report which refers to the valuation of the Canadian Arctic Island permits. Therein it is stated that the 'Trustee questions the bona fides of the transaction with Mecom, as the evidence tends to establish that he entered into the transaction as an accommodation to John M. King or one of his corporations.' The primary support for such statement are the facts revealed to me by Mr. Neal Marriott."

3. In an attempt to show that Boucher's Section 167 testimony contains information that the Government may have used in its case, Boucher lamely points to pages 75-77 and 145-46 of the transcript of that testimony, claiming that in those pages "[t]here is a clear inference from Boucher's testimony that there may have been, or at least he suspected, some side agreements to the Mecom transaction to which he was not privy." (Boucher memorandum at p.6.) We are submitting those pages to the Court, as Exhibit A to this memorandum, so the Court may examine them. If Boucher's testimony there contains the "inference" that he claims, it is clear as mud. In fact, Boucher specifically denies knowledge of any side agreement between Mecom and King except for the allegations concerning such an agreement

A 744

JRW:ma

that Mecom made in his bankruptcy proceedings. It is difficult to conceive what use the Government could have made of such testimony, and Boucher does not suggest any. Concededly, Boucher does say on page 145, "Now, Jack, I don't know what you are after because if you go back historically, hell, he [King] guaranteed anything." While we do not dispute the truth of that statement, we submit that it would not have been a particularly helpful investigative lead.

4. Boucher's memorandum at page 4 also asserts that "Von Stein now concedes contrary to his affidavit to the Court of May, 1976, ¶9, that upon a rereading of the August 6-7, 1973, Denver, Colorado, transcript there are relevant portions pertaining to the subject matter of the Indictment." Mr. Von Stein, in his affidavit, stated that he had read the transcript of the Section 167 testimony in the Summer of 1975, but had not read it since and did "not <u>recall</u> anything relevant to the indictment in it." (emphasis added) Mr. Von Stein's supposedly "contradictory" testimony at the post-trial hearing was as follows:

JRW:ma

> "A. I reread [the transcript] last night, and I saw things in there which -- there are some pages in there which are relevant to the issues in the case, yes.
>
> "When I wrote my affidavit, however, I did not recollect anything." (Tr. at p.14)

5. On pages 5 and 6 of his memorandum, Boucher lists subjects about which he testified in 1973 and which "paralleled the Government's proof at trial." Boucher's testimony in 1973 on certain of those subjects -- such as the COG transaction, Bristol Bay and the Mecom transaction -- directly contradicts the theory of the Government's case and its proof. To the extent there was any evidence at trial about King's aborted attempt to take over IOS, it was brought out primarily by the defendants. In addition, so far as we can recall, there was no evidence whatsoever at trial about another of the subjects Boucher lists --"[t]he alleged sale of dry holes." More fundamentally, however, Boucher in no way explains how any of the evidence the Government presented at trial could not have been obtained from the independent bases we have previously set forth and instead must have been obtained as a result of Boucher's testimony. If Boucher did testify under a grant of immunity in August, 1973 -- which we do not concede -- it was use,

A 746

JRW:ma

not transactional, immunity, and merely because Boucher testified on a subject does not immunize him from prosecution on that subject if, as we have shown, the Government's evidence was obtained from a source wholly independent of his testimony.

6. The Government has previously given to the Court and the defendants the six pages of Boucher's 1971 Dallas testimony that Mr. Von Stein had duplicated in 1975. At pages 6 and 7 of his memorandum, Boucher states that "[t]his testimony essentially dealt with Boucher's being asked to opine on the value of the Arctic holdings of KRC...." What Boucher does not say is that although asked, he refused to give an opinion on the Arctic's value, nor does he explain what use the Government could have made of that testimony.*

7. Without citing a page of the post-trial hearing transcript, Boucher's memorandum declares that "Von Stein further concedes it was not until after his

* Boucher's attorney has in the past suggested that it is the Government's obligation to provide him with the entire transcript of Boucher's Dallas testimony located in the files of the Denver bankruptcy court, and that he cannot adequately pursue this motion without it. Boucher himself was in Denver before, during and, we assume, after the trial, and his attorney has not explained what infirmity has prevented Boucher from personally copying the transcript and sending it to his attorney.

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first meeting with Mr. Pfeiffer in September, 1973, that he narrowed the focus of his investigation. . . on the Arctic transactions." Von Stein made no such concession (see Tr. at pp. 9-10). In any event, Boucher has refused to point out exactly what portion of his testimony could have caused Pfeiffer to cause Von Stein to focus on the Arctic.

8. King contends that the Government must demonstrate the source of the documents it used in this case. Mr. Von Stein, in his July 29, 1976, affidavit, set forth the general sources from which he obtained documents and information and which led him to witnesses. He also described the specific sources of each Government witness, except for two witnesses that were covered in an affidavit by Mr. Wing. Except for a few bank records admitted by stipulation, each document offered at trial was identified by and offered through those witnesses. Those witnesses and the general investigative sources described by Mr. Von Stein were the sources that led us to -- and in large part actually provided us with -- the documents we used. In the absence of any allegation by King challenging the independent sources we have set forth and specifically explaining what in his bankruptcy testimony could have led

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us to any particular document or group of documents, his contention that we must specifically show the source of each document is frivolous.

9. King also claims that the Government's case was tainted by contact with materials relating to tax litigation between the Internal Revenue Service and King. This was a civil lawsuit brought by IRS on behalf of the United States against King and was not subject to the immunity provisions of the Bankruptcy Act. Nevertheless, out of an excess of caution, we refrained from utilizing King's testimony in that litigation. See May, 1976, affidavit of John R. Wing, ¶9. King, of course, has access to all the filings -- briefs, transcripts, etc. -- in that litigation. Moreover, at the post-trial hearing, we offered defense counsel an opportunity to examine the materials from that litigation in the possession of this office (Tr. at p. 62), but they have not accepted the offer even though King asserts it is "obvious" that the briefs and transcripts in those proceedings "contain facts reflecting King's immunized testimony." Finally, assuming arguendo the materials are in some way "tainted" by

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King's immunized testimony, King has not demonstrated how in the summer and fall of 1975, when the Government obtained the tax litigation materials, the "tainted" portion of those materials could have led us to any evidence we did not already have.

10. Similarly, King does not point out what portion of the notes of his bankruptcy testimony could have led the Government to evidence, especially by June, 1975, when Mr. Von Stein obtained the notes from ICS offices in Ferney-Voltaire, France. King emphasizes that Von Stein testified that the following passage in the notes was a "decent point": "Robert Rath [Raff] Note. No effort to collect payment. JMK doesn't think there are any assets on which to collect." However, Von Stein had contacted Raff by 1974, and King does not show what use the Government made of that passage on its direct case or on cross-examination.

11. Mr. Von Stein testified that John Phillips represented Global Natural Resources, Inc., at the KRC bankruptcy proceedings, not the John King bankruptcy proceedings (Tr. pp. 75-76), and if Phillips represented

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Global in the John King bankruptcy the defendants have not shown to what extent, if any, he came in contact with King's testimony. In any event, King does not explain what portion of his bankruptcy testimony Phillips could have directly or indirectly transmitted to the Government and how such transmittal would contradict the Government's showing of independent sources for its evidence.

We do not wish to add unnecessarily to the volumes of papers already filed by both sides on this motion, so we will not repeat the legal and factual arguments and analyses previously set forth in the Government's memoranda and affidavits. We do wish to point out, however, that the defendants' arguments based on United States v. McDaniel, 482 F.2d 305 (8th Cir. 1973), to the effect that any contact by the prosecution at any point with immunized testimony will irreparably taint its case -- an argument that, if it prevailed, would come close to making "use" immunity into "transactional" immunity -- has been rejected by the Second Circuit in United States v. Bianco, 534 F.2d 501, 511 n.14 (2d Cir. 1976). In addition, Boucher argues that after he appeared before the Grand Jury in this case and asserted

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his Fifth Amendment privilege against self-incrimination, the use by the Government of his prior statements on the same subject about which he refused to testify in the Grand Jury violated his attorney-client privilege and his Sixth Amendment right to counsel. This argument, so novel it borders on the bizarre, can most quickly be disposed of by pointing out that the cases cited by Boucher deal with Government intrusions into actual discussions between a defendant and his attorney, a situation that does not have the remotest relevance to this case.

In sum, the Government has shown that whatever contacts it had with allegedly immunized testimony were slight, and no use was made of it -- indeed, most of the contacts occurred when the investigation was largely completed. More importantly, however, the Government has satisfied its burden* under Kastigar v. United States, 406 U.S. 411,

* Boucher describes the Government's burden as being "almost insuperable," yet in at least two recent cases in the Circuit where claims similar to the ones here were raised, the Government prevailed. See United States v. Bianco, 534 F.2d 501 (2d Cir. 1976); United States v. Boyd, 404 F. Supp. 413 (S.D.N.Y., 1975), aff'd. without opinion, Dkt. No. 75-1393 (2d Cir. Apr. 15, 1970).

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(1972), of showing bases for all its evidence at trial wholly independent of the defendants' bankruptcy testimony.* The defendants have had access to all the grand jury testimony in this case and many Government files, and have had an evidentiary hearing. They have filed numerous memoranda, affidavits and other documents in support of their motions.. Yet they have not in any way contradicted or refuted -- indeed, they have barely addressed -- the Government's showing.** The Motions should be denied.

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* We are submitting to the Court Mr. Von Stein's criminal reference report, prepared and submitted to this office in 1974 and setting forth the evidence Von Stein had gathered to that point in his investigation and its sources. It was admitted as Government's Exhibit I at the post-trial hearing. The report provides documentation in addition to the material previously submitted on this motion showing the sources for the Government's evidence wholly independent of the defendants' bankruptcy testimony. Particular note should be made of passages like the following: "We have been able to get decent information on one unsuccessful attempt to sell part of FOF's Arctic permits. (Only King and Boucher would know all the offerees from which we would be able to see precisely what King and Boucher were offering and on what terms, but King and Boucher have refused to testify.)"(p.26)

** King's attorneys state that they have recently learned of the existence of transcripts and summaries of sessions of King's personal bankruptcy proceedings that they had previously thought were untranscribed, and they ask for additional time to study these materials and submit additional papers to the Court. The Government opposes the application. This is the defendants' motion, which was first made approximately four months ago. (continued following page)

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**(continued from preceding page) In addition, it has been almost two months since the end of the trial. The defendants have had ample opportunity to prepare their motions and gather all relevant materials, and have filed numerous papers and documents in support of the motions. Litigation must stop at some point, and the defendants should not be permitted to drag out these proceedings indefinitely. Moreover, neither defendant has made any effort to refute the Government's showing of independent bases for its evidence, and King's attorneys have not suggested how these new materials can help them cure that deficiency.

Dated: New York, New York
August 30, 1976

Respectfully submitted,

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A I don't know, Jack, but I would say offhand, yes, we did, but you know that is ascertainable.

Q I believe you have answered the question but were the two projects connected in any way?

A No.

Q To be more specific, did you say or did somebody say to Mr. Trueblood, "We will sell these properties at these prices if you will purchase the Arctic for these prices."?

A No.

Q And they are separate transactions?

A Absolutely.

Q Was there any assurance given to Trueblood that he would be held harmless from any loss regarding the Arctic transaction?

A Not to my knowledge.

Q Do you know of any agreements with Mr. Trueblood that would be comparable to Exhibit No. 2?

A No.

Q That is, that Mr. King said that they will hold him harmless from any loss or that sort of thing?

A No.

Q Do you know of any agreements that were had of a similar nature with Mr. Mecom, John Mecom, in regard to this?

A Well, you know, you come around the corner and his bankruptcy and the allegations he makes in his bankruptcy and

EXHIBIT A

we get into sometime before the filing of the petition and there's a request made of us to assign his interests to The Colorado Corporation. This has got to be sometime in the first half of 1971.

Q Let me restrict your knowledge to 1969 or early part of 1970. Did John King or anybody on behalf of King Resources give John Mecom any assurance that he would be held harmless from any loss by reason of his execution of the agreement dealing with the Arctic?

A Not to my knowledge.

Q To your knowledge no such agreement exists?

A No -- at that time.

Q The only thing you know now is that subsequent to his going into the Chapter XI or Chapter X reorganization, these accusations have been made?

A That is certainly the impression you get from what is stated there.

Now, as I told you informally one day, he kept calling me all the time when I was down there playing in that golf tournament. I drew my own conclusions from that series of conversations, which made all kinds of sense to me, frankly.

Q Why don't you repeat that, if you can.

A I was down there in Palm Desert playing in the Bob Hope Classic and he would call me every other day. He

kept asking whether we had bid out and finalized any agreements to drill the obligation wells up there to which I said no but we were damned close, we had bids from seven or eight contractors to perform those services. He said he would like to bid and would I give him the parameters of what our requirements were to which I responded that I would be happy to. And this is vivid for me in reflection not only because where I was but because our Canadian people were driving me crazy saying we can't afford to delay, we have got to let the contracts because the logistics of our loading these tools on these boats in Houston on such and such a date and et cetera, et cetera, et cetera, and how can we stop --

MR. PFEIFFER: Off the record.

(Whereupon, there was discussion outside the record.)

Q (By Mr. Pfeiffer) Can you relate this then back to bona fides of his agreement with King Resources and the IOS situation, what does that have to do with what you have just stated?

A Oh, I had the basic impression that Mr. Mecom felt that through this participation just perhaps on a competitive basis he could establish an operating foothold in the Arctic as a drilling contractor. That was the impression that I had and it made good business sense to me in that he understood as I understood and the technical geological people understood

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Q Big Horn in Montana and Hyland in British Columbia?

A I think those are the copper claims.

Q These are properties that the IOS people --

A I could spend three days talking to you about the attitude associated with that whole thing. That spread up there is in North Dakota. That stuff that says Montana and--

Q Well, it is just Big Horn.

A Yes, Big Horn in Montana.

Q Okay, maybe we had better get into that sometime later. I think that there are a number of other things we have got to get into but I think that will cover it for now.

Let me just ask you -- I don't know whether I asked you yesterday or not, maybe I did -- as to whether or not you are aware of any other letter agreements like this Exhibit No. 2 which were executed by John King wherein he would use his best efforts to see that his companies would stand behind certain transactions that he entered into?

A No. The Mecom thing you and I discussed.

Q Yes, the Mecom thing.

A Now, Jack, I don't know what you are after because if you go back historically, hell, he guaranteed anything. Any time he borrowed a nickel he had to guarantee it personally.

Q This runs in reverse, here it is a situation to where he is saying that he will cause King Resources to hold Lark harmless from a deal that is entered into with Imperial-

American.

A You understand what I am talking about. I mean, you date back to 1961, every time you borrowed a nickel you had to guarantee it. I am not absolutely sure but when the Midcontinent deal was done, I think there was a personal guarantee behind that financing as well.

Q Well, there is a personal guarantee of John King guaranteeing the obligation of King Resources or John King guaranteeing the obligation of Imperial-American. But I am talking about here is the situation to where Imperial-American over which John King -- well, he has a tremendous financial interest in Imperial-American -- they enter into a transaction with a third person and John King says, "I will cause King Resources to hold you harmless from any loss on this deal." That is the type of situation I am talking about.

A I don't know whether he says that or not.

Q Well, I guess what I am after is it is in Paragraph 3 of the letter which says: "I agree to cause the companies over which I have control to make sufficient purchases of supplies from Lark and/or its designee in sufficient amounts so that Lark is able to meet its obligations of payment under the said agreement in a timely manner."

Maybe my question should be, do you know of any situations other than this transaction and maybe the Mecom transaction where John King has made certain statements that